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A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1911,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836-1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA; AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

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PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest, 1836-1909. It contains the cases published in the Indian Law Reports (four series), the Law Reports Indian Appeals, and the Calcutta Weekly Notes, for the year 1911.

The different sets of Law Reports in which the same cases have been published, are specifically noted in the Table of Cases.

For easy reference, a number of words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list, in alphabetical order, under the heading " Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA.

The 6th September 1912.

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HIGH COURT, CALCUTTA, 1911.

CHIEF JUSTICE:

The Hon'ble Sir Lawrence Hugh Jenkins, Kt., K.C.I.E.

PUISNE JUDGES:

The Hon'ble Justice Sir Richard Harington, Bart.
" " " " Cecil M. W. Brett, Kt., C.S.I.
" " Mr. Justice H. L. Stephen.
" " " " J. G. Woodroffe.
" " Justice Sir Asutosh Mookerjee, Kt., C.S.I.
" " Mr. Justice C. P. Caspersz.
" " " " H. Holmwood.
" " " " C. W. Chitty.
" " " " E. E Fletcher.
" " " " S Sharf-ud-din.
" " " " H. R. H. Coxe.
" " " " H. W. C. Carnduff, C.I.E.
" " " " D. Chatterjee.
" " " " N. R. Chatterjea.
" " " " W. Teunon (*Offg.*).

ADVOCATE-GENERAL:

The Hon'ble Mr. G. H. B. Kenrick, K.C.

STANDING COUNSEL:

The Hon'ble Mr. B. C. Mitter.

HIGH COURT, BOMBAY, 1911.

CHIEF JUSTICE:

The Hon'ble Sir Basil Scott, Kt.

PUISNE JUDGES:

The Hon'ble Mr. Justice L. P. Russell.
" " Sir Narayanrao G. Chandavarkar, Kt.
" " Mr. Justice S. L. Batchelor.
" " Sir Dinsha D. Davar, Kt.
" " Mr. Justice F. C. O. Beaman.
" " " " J. J. Heaton.
" " " " N. C. Macleod (*Additional*).
" " " " L. J. Robertson (*Offg.*).
" " " " M. H. W. Hayward (*Offg.*).
" " " " G. S. Rao (*Offg.*).

ADVOCATE-GENERAL:

The Hon'ble Mr. T. J. Strangman.

HIGH COURT, BOMBAY, 1911—*concld.*

LEGAL REMEMBRANCER:

MR L C. CRUMP (*On leave*).
,, P E. PERCIVAL (*Offg*)

HIGH COURT, MADRAS, 1911.

CHIEF JUSTICE:

The Hon'ble SIR CHARLES ARNOLD WHITE, KT.

PUISNE JUDGES:

The Hon'ble SIR R S. BENSON, KT.
,, ,, MR. JUSTICE J. E. P. WALLIS.
,, ,, ,, ,, L. C. MILLER.
,, ,, ,, ,, J. H. MUNRO (*retired, 8th Nov 1911*).
,, ,, ,, ,, C. SANKARAN-NAIR, C.I.E.
,, ,, ,, ,, ABDUR RAHIM
,, ,, ,, ,, V. KRISHNASWAMI AIYAR (*resigned, 16th Jan 1911*)
,, ,, ,, ,, P. R. SUNDARA AIYAR.
,, ,, ,, ,, W. B. AYLING (*Offg*).
,, ,, ,, ,, J. H BAKEWELL (*Offg.*)
,, ,, ,, ,, C. G. SPENCER (*Offg.*).
,, ,, ,, ,, W. W. PHILLIPS (*Offg.*).

ADVOCATE GENERAL

The Hon'ble MR P S SIVASWAMI AIYAR, C I E.

HIGH COURT, ALLAHABAD, 1911.

CHIEF JUSTICE

The Hon'ble SIR JOHN STANLEY, KT, K C (*retired, 20th April*).
,, ,, ,, HENRY RICHARDS, KT, K C

PUISNE JUDGES:

The Hon'ble SIR G E. KNOX, KT
,, ,, P. C BANERJI.
,, ,, H. G. RICHARDS (*up to 20th April*)
,, ,, SAIYID KARAMAT HUSAIN
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ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1911.

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——— *Corroboration—Material particulars—Identity of accused.* Before the testimony of an accomplice can be acted on, it must be corroborated in material particulars. There must be corroboration not only as to the crime, but also as to the identity of each one of the accused. This is no technical rule, but one founded on long judicial experience. EMPEROR *v.* LALIT MOHAN CHUCKERBUTTY (1911)
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——— *Spy or detective associating with a wrong-doer for the purpose of discovery and disclosure of an offence—Necessity of corroboration—Evidence Act (I of 1872), ss. 114, 133.* A person who makes himself an agent for the prosecution with the purpose of discovering and disclosing the commission of an offence, either before associating with wrong-doers or before the actual perpetration of the offence, is not an accomplice but a spy, detective or decoy whose evidence does not require corroboration,

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though the weight to be attached to it depends on the character of each individual witness in each case But a person who is associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission, is an accomplice requiring corroboration *Rex* v. *Despard, 28 How. St. Tr. 346, Reg* v. *Dowling, 3 Cox C. C. 509, Reg.* v. *Mullins, 3 Cox C. C. 526, Rex* v *Bickley, 2 Cr. App. Rep. 53, 73 J. P. 239, Reg.* v. *Sharkar Shobag, Ratan unreported Cr. Ca 428,* approved of. *Queen-Empress* v. *Javecharam, I L. R. 19 Bom. 363,* distinguished by HOLMWOOD, *J.*, and dissented from by DOSS, *J.* EMPEROR *v.* CHATURBHUJ SAHU (1910) . I. L. R. 38 Calc. 96

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1. ——— *Administrator pendente lite, accounts of, when not objected to by parties and passed by Court, if may be re-opened in the absence of fraud or omission—Principle on which commission is charged, objection as to proper time for taking objection.* When accounts submitted by an administrator *pendente lite* have been passed by the Court in the presence of parties entitled to call on him to account and such parties have had an opportunity of being heard, he cannot thereafter be called upon to account again to such parties or their representatives unless fraud, or mistake, or omission on the part of such administrator *pendente lite* is proved in such accounts An administrator *pendente lite* discharges his duties of accountability when his accounts are complete, and honest, and does not contain false or fraudulent entries or omissions. If the parties had any objection to the principle on which he charged his commission on the assets they

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should have objected to it when the account was before the Court. KHITISH CHANDRA ACHARYA CHOWDHURY *v* OSMOND BEEBY (1911) **15 C. W. N. 832**

2. ——— *Suit for account—Civil Procedure Code (Act XIV of 1882), ss 12, 13—Suit for account against agent—Cross-suit by agent—Separate trial, if illegal—One suit if should be stayed pending decision in the other—Res judicata* C being sued as agent to account for moneys given to him instituted a separate suit claiming to recover a certain sum which he alleged was due to him from the principal over and above the amount in respect of which account was sought from him: *Held*, that the decision in the former suit cannot operate as a bar to the trial of the latter on the principle of *res judicata* That though it was desirable, that the two suits should have been tried together, there was no legal bar to their being tried separately, though the same ground might have to be traversed over again S 12, Civil Procedure Code, has no application to suits of this kind. CHANDRA KUMAR MAJUMDAR *v.* PRAMATHO NATH RAY (1911) **15 C. W. N. 930**

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——— *Charge of conspiracy—Whether a person acquitted can be charged with same offence, as part of a conspiracy* Where a person has been tried for a specific offence and acquitted, and he is subsequently charged with conspiracy of which that offence is alleged to form a part:—*Held*, that an acquittal is conclusive; and it would be a very dangerous principle to regard a judgment of not guilty as not fully establishing the innocence of the person to whom it relates. *Rex* v. *Plummer*, [*1902*] *2 K B 339*, referred to. EMPEROR *v.* LALIT MOHAN CHUCKERBUTTY (1911) **I. L. R. 38 Calc. 559**

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See LANDLORD AND TENANT ACT.

——— 1860—XLV.

See PENAL CODE.

——— 1863—XX.

See RELIGIOUS ENDOWMENTS ACT.

——— 1864—XVI.

See REGISTRATION ACT.

——— 1865—III.

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ACT—*contd.*

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——— 1882—II.

See TRUSTS ACT.

———IV.

See TRANSFER OF PROPERTY ACT.

———V.

See EASEMENTS ACT.

———VI.

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———XIV.

See CIVIL PROCEDURE CODE, 1882.

———XV.

See PRESIDENCY SMALL CAUSE COURTS ACT

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See SUCCESSION CERTIFICATE ACT.

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——— 1894—I.

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——— 1895—I.

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——— 1907—III.

See PROVINCIAL INSOLVENCY ACT.

——— 1908—V.

See CIVIL PROCEDURE CODE, 1908.

———VII.

See NEWSPAPERS (INCITEMENT TO OFFENCES) ACT

———IX.

See LIMITATION ACT.

——— 1909—III.

See PRESIDENCY TOWNS INSOLVENCY ACT.

———IV.

See WHIPPING ACT

ACT OF LEGISLATURE.

See ESTOPPEL . **I. L. R. 38 Calc. 512**

ACTIO PERSONALIS MORITUR CUM PERSONA.

——— *Maxim applies to actions in tort—No application to actions where contractual obligation implied by law—Government—Employment of shroff to accept Babashai coins—Shroff accepting Shikkai coins instead—The coins accepted by Mint officers—Loss to Government—Measure of damages—Acquiescence or ratification by Government* On the occasion of calling in the Babashai coins from the British villages in the Kaira District, the plaintiff was employed by Government as a shroff to examine and accept the Babashai coins only The plaintiff worked for about a month during which period he passed 12,170 Shikkai coins

ACTIO PERSONALIS MORITUR CUM PERSONA—*concld.*

as Babashai coins. At that date the Shikkai coins were not current and had only bullion value. The coins were finally sent to H. M.'s Mint, where they were melted. Government alleged that by the shroff's neglect in accepting Shikkai coins they suffered a loss of R1,758-15-1, which they asked the shroff to pay. The shroff paid R1,095. To recover the remaining R663-15-1 Government filed a suit against the shroff The shroff also filed a counter suit against Government to recover R1,095 which he alleged were wrongfully recovered from him Both suits were heard together. The District Judge dismissed both suits holding that Government had suffered a loss by the shroff's action, but it was compensated by the money already paid by the shroff. Against this decision both parties appealed While the appeals were pending in the High Court, the shroff died and his son was brought on the record as his legal representative.—*Held*, that the maxim *actio personalis moritur cum persona* did not apply to the case, as there was an obligation implied by law The shroff undertook to pass only Babashai coins; and it was an implied term of that contract that if he passed any other, and Government suffered loss, he should make it good (s. 211 of the Indian Contract Act, 1872). *Held*, further, that the fact that Government had kept and had the benefit of Shikkai coins was not sufficient by itself to raise any presumption of either estoppel or acquiescence or ratification on the part of Government. *Held*, also, that the action of the Mint officers in accepting the Shikkai coins could bind Government only so far as they had derived benefit from the action of the Mint officers; that that benefit made them liable only so far that it was to be taken into account in measuring the damages for the loss sustained by Government in consequence of the shroff's deviation from the directions given to him and the purpose of his employment. *Held*, therefore, that in estimating the loss suffered by Government owing to the shroff's action, the bullion value of the Shikkai coins must be taken into account, for they had, on the date they were accepted, ceased to be current coin. It is a principle that nominal damages are awarded only where there is failure to prove any appreciable damage in fact. CHUNILAL *v.* THE SECRETARY OF STATE FOR INDIA (1910)
I. L. R. 35 Bom. 12

ACTION IN TORT.

See CAUSE OF ACTION
I. L. R. 38 Calc. 797

ADJUDICATION.

——— in England—

See INSOLVENCY . I. L. R. 38 Calc. 542

——— order for—

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ADJUSTMENT OF ACCOUNT.

See PARTNERSHIP . 15 C. W. N. 882

ADMINISTRATION.

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ADMINISTRATION SUIT.

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I. L. R. 35 Bom. 352

ADMINISTRATOR.

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See ACCOUNT . . 15 C. W. N. 832

ADMISSION.

See DIVORCE . I. L. R. 38 Calc. 907

ADMISSIONS AND CONFESSIONS.

——— *Admission—Retracted confession—Evidence Act (I of 1872), ss. 21, 30—Relevancy.* For a conspiracy to wage war, no act or illegal omission is necessary; the agreement of two or more will suffice While admissions, which include confessions, are by s. 21 of the Evidence Act, 1872, declared *relevant* and may be proved as against the persons making them, all that s 30 of the Evidence Act provides is that the Court *may* take them into consideration as against other persons. This distinction of language is significant, and shows that the Court can only treat a confession as lending assurance to other evidence against a co-accused, and a conviction on the confession of a co-accused alone would be bad in law. Moreover, under s 30, that only can be taken into consideration which is a confession in the true sense of the term, so that to place any reliance on a retracted confession against a co-accused would be most unsafe. *Yasin* v *Emperor, I L. R 28 Calc. 689*, referred to. A retracted confession cannot ordinarily take the place of legal proof. EMPEROR *v.* LALIT MOHAN CHUCKERBUTTY (1911)
I. L. R. 38 Calc. 559

ADOPTED SON.

See GUARDIANS AND WARDS ACT, S 17.
15 C. W. N. 558

ADOPTION.

See HINDU LAW—ADOPTION.
I. L. R. 38 Calc. 694

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I. L. R. 35 Bom. 264

——— payment for—

See ADOPTION . I. L. R. 35 Bom. 169

——— *Limitation Act (XV of 1877), Sch II, Arts 118, 141—Adoption alleged invalid—Suit by reversioner for possession—Limitation—Limitation Act (IX of 1871), Sch. II, Art. 129—Adverse possession in widow's life-time, plea of—Gift of orphan boy to be adopted by elder brother—Validity—Factum valet—Will—Construction—Authority to adopt son—Successive adoptions if valid—Gift to widow, if absolute.* When a plaintiff, a Hindu, seeks to recover possession as reversioner, on the allegation that his rights have not been

ADOPTION—*concld.*

affected by an adoption made by the deceased widow of the last male holder and alleged by him to be invalid, the limitation applicable is that provided by Art. 141 of Sch. II of the Limitation Act of 1877, and not Art. 118. The limitation runs from the death of the widow when the cause of action arises entitling the plaintiff to sue for possession Art 118 could not be applied to this case where the reversioner had brought a suit in the lifetime of the widow, praying, amongst other reliefs, for a decree declaring the adoption invalid (as contemplated by Art. 129 of Act IX of 1871 and within the period provided therein), but the Court virtually decided that the plaintiff had no cause of action for such a suit until the succession opened to him and his alleged right to recover possession of the property accrued The alleged adopted son could not claim to have acquired title by adverse possession during the widow's life-time A will conferring on the widow power " to adopt son " and containing no special words restricting that power to one adoption, authorised the widow to adopt a second son on the death during minority of the first adopted son. Where an adoption made 48 years ago was attacked on the ground that the gift of the boy was not properly made in that it was made by his brother, both his parents being then dead : *Held*, that the doctrine of *factum valet* applied, and the adoption, the setting aside of which would deprive the adopted child of his status after it had been accepted for 48 years, should be upheld. *Wooma Daee* v. *Gokoolanund Dass, 1. L. R 3 Calc. 587 ; Chinna Gaundan* v. *Kumara Gaundan, 1 Mad. H. C. Rep. 54 , Raja Vyankataav* v. *Jayavantrav, 4 Bom H C Rep. A. C. 191, Janokee Debea* v *Gopaul Acharya, I. L R 2 Calc. 365*, applied. *Held*, on the construction of the will, that the intention of the testator was that, on the death of the adopted son and failure of any issue, the entire moveable and immoveable properties of the testator would pass to his widow absolutely so that on the death of the first adopted son the property vested in the widow as her *stridhan* BHAGWAT PERSHAD *v.* MURARI LALL (1910) . . **15 C W. N 524**

ADULTERY.

———— admission of—

See DIVORCE . **I. L. R. 38 Calc. 907**

ADVERSE POSSESSION.

See LANDLORD AND TENANT. **I. L. R. 33 All. 757**

See LIMITATION ACT, 1877, SCH II, ARTS. 132, 144 . **I. L. R. 35 Bom. 438**

See LIMITATION ACT, 1877, SCH. II, ARTS. 137, 142, 144 . **I. L R. 33 All. 224**

See LIMITATION ACT (XV OF 1877), SCH II, ART. 141 . **I. L R. 33 All 312**

See LIMITATION ACT, 1877, SCH. II, ARTS 142 AND 144 . **I. L. R. 35 Bom. 79**

See REVENUE SALE LAW, s. 37. **15 C. W. N. 706**

ADVERSE POSSESSION—*concld.*

1. ———— **Acquisition of title.** Where no case of acquisition of title by adverse possession is made in the plaint nor is the question raised directly or indirectly in the issues, the plaintiff ought not to be allowed to succeed on such a case. *Joytara* v. *Mobaruck, I. L. R. 8 Calc. 975, Sundari* v. *Mudhoo Chandra, I L. R. 14 Calc 592 ; Ananda Hari* v. *Secretary of State, 3 C. L. J 316*, referred to But where the question reduces itself to one of law upon facts admitted or proved, it is not only competent to the Court but also expedient in the interests of justice to entertain the plea of adverse possession if such a case arises on the facts stated in the plaint and the defendant is not prejudiced, or taken by surprise. *Lilabati* v. *Bishun Chobey, 6 C L J. 621*, referred to NEPEN BALA DEBI *v.* SITI KANTA BANERJEE (1910) . **15 C. W N. 158**

2. ———— **Cantonment land**—*Limitation —Land situate in a cantonment—Presumption as to title* Certain land situate in the cantonment of Dehra Dun was appropriated in the beginning of the nineteenth century by the predecessor in title of the defendant for the purpose of building a house. The land was held, subject to the rules from time to time applicable to cantonments, by various occupiers until the year 1874, when the cantonments were handed over to the civil authorities. In 1890 the Secretary of State sued the then occupant for a declaration of title and assessment of ground rent, or, in the event of the defendant refusing to pay rent, for possession *Held*, that the circumstances of the case warranted the presumption that the title to the land in suit was vested in the Crown, and that the possession thereof could not be regarded as adverse until at the earliest the year 1874, when the land in suit ceased to be a part of the cantonment. *Secretary of State for India* v. *Jagan Prasad, I L. R. 6 All. 648*, referred to BANK OF UPPER INDIA *v.* THE SECRETARY OF STATE (1910) **I. L. R. 33 All. 229**

3. ———— **Mortgaged property**—*Limitation—Purchaser of a decree on a mortgage allowing a puisne mortgagee to pay him off—Such position inconsistent with a claim to be in adverse possession of the mortgaged property. Held*, that when the purchaser of a decree for sale on a mortgage accepted from a puisne mortgagee the amount due under the decree which he had purchased, he by so doing admitted the validity of the puisne mortgage, and his position was not consistent with a claim to be in adverse possession of the mortgaged property. *Ramcharan* v. *Sadashiv, I. L. R. 11 Bom. 422*, referred to JAGDIP NARAIN SINGH *v* BILAR SINGH (1911) . **I. L. R. 33 All 463**

ADVERSE TITLE.

See TRUSTEE . . **15 C. W. N. 741**

AFFIDAVIT OF DOCUMENTS.

See DISCOVERY . **I. L. R. 38 Calc. 428**

AGGREGATE SENTENCE.

See CRIMINAL PROCEDURE CODE, s. 413. **15 C. W. N. 734**

AGRA TENANCY ACT (II OF 1901).

——— ss. 5, 18, 20, 57.

See TRANSFER OF PROPERTY ACT, s. 91.
I. L. R. 33 All. 111

——— ss. 10, 20, 83—*Sale of zamindari—Agreement to surrender ex-proprietary rights—Possession not delivered—Suit for damages for breach of contract—Void contract. Held*, that a transaction, one of the objects of which is that one party shall be divested of his ex-proprietary rights and that those rights shall vest in the other party, or a sale of zamindari property coupled with an agreement to relinquish the ex-proprietary rights of the vendor, is void so far as the relinquishment of ex-proprietary rights is concerned *Bhikham Singh* v. *Har Prasad, I L. R. 19 All 35, Murlidhar* v. *Pem Raj, I L. R 22 All 205, Kashi Prasad* v. *Kedar Nath Sahu, I L R 20 All. 219, Raghubans Sahai* v. *Brijnandan Lal, 6 All L. J 477, Bharath Singh* v. *Debi Dayal Singh, 6 All L J. 555*, and *Khurshed Ali* v. *Wazir-un-nissa, 7 All L J. 778*, referred to. IKRAM-ULLAH KHAN *v* MOTI CHAND (1911)
I. L. R. 33 All. 695

——— ss. 10, 202—*Exchange of lands on partition—Ex-proprietary tenant—Suit for possession in Civil Court—Res judicata—Procedure* By s. 10 of the Agra Tenancy Act, 1901, where there is a transfer by private alienation, no rights of ex-proprietary tenants accrue if the alienation is by gift or by exchange between co-sharers. Where circumstances exist to which s. 202 of the same Act applies, the Court has no option, but is bound to adopt the procedure laid down in that section. KURA SINGH *v.* CHHALLU (1911)
I. L. R. 33 All 507

——— s. 20 (2)—*Civil Procedure Code, 1882, s. 266—Occupancy holding—Mortgage of occupancy holding and appurtenant house—Mortgaged property not saleable.* Where an occupancy tenant purported to mortgage (i) a grove, which was his occupancy holding, and (ii) a house appurtenant to such holding: *Held*, that having regard to s. 20 (2) of the Agra Tenancy Act, 1901, and s. 266 of the Code of Civil Procedure, 1882, neither the grove nor the house could be sold in execution of a decree on the mortgage RAM DIAL *v* NARPAT SINGH (1909) . . I. L. R. 33 All. 136

——— s. 21—*Occupancy holding—Mortgage—Suit by mortgagor to recover possession—Illegal contract—Restitution of benefit. Held*, that the mortgagor of an occupancy holding who has put the mortgagee in possession cannot recover possesssion upon the ground merely that the mortgage is void under the provisions of the Agra Tenancy Act, 1901, without repaying to the mortgagee the money which he has received from him. *Fasih-ud-din* v *Karamat-ullah, All Weekly Notes (1888) 128*, followed. BAHORAN UPADHYA *v.* UTTAMGIR (1911) . . I. L. R. 33 All 779

——— s. 56—*Jurisdiction—Civil and Revenue Courts—Suit for ejectment of a tenant in Revenue Court—Subsequent suit in Civil Court against the same defendant as trespasser.* Where the plaintiff had previously sought to eject the defendant by suit in the Revenue Court on the plea that he was the plaintiff's sub-tenant, but had failed, on the finding that the defendant was an occupancy-tenant, it was *held*, that the plaintiff could not thereafter sue the defendant in the Civil Court to evict him as a trespasser. NARAIN SINGH *v.* GOBIND RAM (1911) . I. L. R. 33 All. 523

AGRA TENANCY ACT (II OF 1901)—*contd.*

——— s. 56—*concld*

——— s. 63—*Civil Procedure Code, 1908, s. 11, Expln VI—Suit for ejectment in Revenue Court—Question of title decided by Assistant Collector—Decision allowed to become final—Res judicata.* In a suit for ejectment in the Revenue Court, the defendants to that suit pleaded title in themselves, and the Assistant Collector determined that question and held that the plaintiff had failed to prove title as against them. This decision became final. In a subsequent suit in the Civil Court for declaration of title against the former defendants and also certain others: *Held*, that the decision of the Revenue Court operated as *res judicata* so far as concerned those persons who had been defendants to the previous suit, but not as against those who were no parties to the suit *Behari* v. *Sheobalak, I. L R 29 All 601*, referred to. BED SARAN KUNWARI *v.* BHAGAT DEO (1911)
I. L. R. 33 All. 453

——— ss. 95, 167—*Civil and Revenue Courts—Jurisdiction—Dispute between rival claimants to a tenancy* S. 95 of the Tenancy Act was not intended to apply to the case of disputes between rival claimants to a tenancy. It was intended to apply to questions arising between the landlord on the one side and the tenant on the other. *Primâ facie* the Civil Court is the proper Court to try all questions, and it is only when suits are expressly excluded from its cognizance that its jurisdiction is ousted. *Kali Charan* v *Musammat Utmi, 7 All. L. J. 658*, referred to. BHUP *v* RAM LAL (1911) . . . I. L. R 33 All. 785

——— ss. 102, 198—*Landlord and tenant—Suit for rent—Jus tertii—Intervenor to whom tenant has not actually paid rent. Held*, that s. 198 of the Agra Tenancy Act, 1901, does not apply to the case of an intervenor, whose *jus tertii* the tenant defendant in a suit for rent has set up, and who has been made a party to the suit, but to whom the tenant has not actually and in good faith paid rent. SHEO DIHAL SINGH *v.* BADRI NARAIN SINGH (1905) . . . . I. L. R. 33 All. 61

——— s 158—*Definition—"Successor"—Transferee from a rent-free grantee. Held*, that a transferee from a rent-free grantee is a successor of the grantee within the meaning of s. 158 of the Agra Tenancy Act, 1901. SUNDAR SINGH *v.* THE COLLECTOR OF SHAHJAHANPUR (1911)
I. L. R. 33 All 553

——— s. 177—*Appeal—Question of proprietary title—Jus tertii pleaded by defendant—Third person added as a defendant—Question decided*

AGRA TENANCY ACT (II OF 1901)— *concld.*

——— s. 177—*concld.*

against the latter. In a suit for assessment of revenue on land in the possession of the defendant, the defendant pleaded that the land belonged not to the plaintiff, but to a third person The third person was brought upon the record as a defendant and claimed the land as his, and, on the question of ownership being decided against him, appealed. *Held*, that the question raised in the suit was a question of proprietary title which arose directly and substantially in the suit and that an appeal lay to the District Judge MAHARAJA OF BENARES *v* BALDEO PRASAD (1910) . **I L. R 33 All. 260**

——— s. 201—*Evidence—Presumption—Record of plaintiff's name as co-sharer—Evidence Act (I of 1872), s 4 Held* by RICHARDS, *C J*, KARAMAT HUSAIN, TUDBALL, CHAMIER AND PIGGOTT, *JJ.* (KNOX, *J.*, *dissenting*), that in a suit instituted under the provisions of chapter XI of the Agra Tenancy Act, 1901, where the plaintiff is recorded as having proprietary title entitling him to institute the suit, the Revenue Court is not competent to go behind the record, receive evidence and itself try the question of proprietary title *Bechan Singh v. Karan Singh, I. L. R. 30 All. 427*, followed. *Waris Ali Khan v. Parsotam Narain, I. L. R. 32 All. 427*, overruled. DURGA PRASAD *v* HAZARI SINGH (1911) . . **I. L. R. 33 All 799**

AGRICULTURIST, WIFE OF.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).
I. L. R. 35 Bom. 204

ALIENATION.

See CIVIL PROCEDURE CODE, 1882, S 325A
I. L. R. 33 All. 233

See HINDU LAW ENDOWMENT
I. L. R 38 Calc 526

See HINDU LAW—JOINT FAMILY.
I L. R 33 All. 283

——— *Restrictions on alienation—Gift burdened with an obligation—Alienation by donee* When it is doubtful, whether a deed embodies a complete dedication of property to a religious trust or merely creates a gift of that property, subject to an obligation to perform certain services, the question should be decided by reference to the deed itself In the former case the property would be inalienable and in the latter alienable, subject to the obligation, and notwithstanding restrictions as to selling or mortgaging the said property DASSA RAMCHANDRA *v.* NARSINHA (1901) . . **I. L. R 35 Bom. 156**

ALIYASANTANA LAW.

——— *Ejman, removal of—Grounds on which Ejman of an Aliyasantana family may be removed* When the Ejman of an Aliyasantana family in the discharge of his duties as Ejman not only neglects the interests of the family but takes advantage of his position to secure benefits for his children at the expense of the other members of the family, the Courts will be justified in removing such Ejman. When unjustifiable alienations of family property are made, the Ejman, although not a party to such alienations, will be liable to be removed, if, in a suit brought to set aside such alienations for the benefit of the family, he sides with the defendants and seeks to support such alienations. THIMMAKKE *v.* AKKU (1910) . . **I L. R. 34 Mad. 481**

ALIYASANTANA LAW—*concld.*

AMALNAMA.

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15 C. W. N 536

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APPEAL.

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1. ABATEMENT OF APPEAL.

1. ——— Appeal, abatement of—Limitation Act, IX of 1908, s. 3, Art. 177—*Period of limitation provided in Art 177 applicable to applications made after the day when the Act came into force—Effect of abatement of appeal against one of several joint trustees.* Applications to bring in the legal representatives of a deceased respondent made after the coming into force of Act IX of 1908 must, under s. 3 and Art 177 of the Act, be made within six months of the death of such respondent. If not so made the appeal must abate against such respondent Where the deceased respondent, in respect of whom the appeal abates, is a joint trustee with other respondents, the appeal cannot proceed against such other respondents. ARAYIL KALI AMMA *v.* SANKARAN NAMBUDRIPAD (1910) I. L. R. 34 Mad. 292

2. ——— Appeal, decree in—*Plaintiff not appealing as regards part of suit dismissed—Position of, as respondent.* In a suit on a promissory note *B* prayed for relief against *A* and *G* and obtained a decree against *G* alone. *B* preferred no appeal as regards his claim against *A*. On appeal by *G*, *B*'s suit was dismissed: *Held*, that the Judge in the appeal by *G* was right in not passing a decree against *A*, *B* not having asked for it at all in any manner. ASUNDI BASAVVA *v.* BAREDDI GOVINDAPPA (1910) I. L. R. 34 Mad. 249

2. CONSOLIDATED APPEAL.

——— *Appeal—Cases governed by one judgment but not consolidated—One appeal, if lies.* Where in several execution cases one judgment was passed but a separate order was recorded for each case and there was no order for consolidation of the cases: *Held*, that there should be as many appeals as there were original cases and not one consolidated appeal against all the orders. RAKHAL CHANDRA TEWARI *v* MANMOTHO NATH MITTER (1910) . . . 15 C. W. N. 994

3. JURISDICTION.

1. ——— *Jurisdiction—Sambalpur—Appeal against decree or order passed by Deputy Commissioner acting as a Civil Court—Central Provinces Land Revenue Act (XVIII of 1881), as amended by Beng. Act IV of 1906, ss. 136 H (1) and 22, cl. (b)—Bengal, North-Western and Assam Civil Courts Act (XII of 1887)—Second Appeal, if it lies to High Court when original appeal decided by the wrong Court.* S. 136 H (1) introduced into the Central Provinces Land-revenue Act of 1881 by Act XVI of 1889, qualifies s. 22, cl (*b*) of the original Act, with the result that under it, read with s 3 of the Sambalpur Civil Courts Act, 1906 (Ben. Act IV of 1906), an appeal against a decree or order passed by the Deputy Commissioner acting as Civil Court lies to the District Judge Where, in such a case, an appeal was wrongfully preferred before the Commissioner, no second appeal from the Commissioner's decision lies to the High Court. RAGHUNATH SINGH *v.* ABDHUT SINGH (1911) I. L R. 38 Calc. 391

2 ——— *Jurisdiction—Valuation—Suit for specific performance of contract to sell—Additional relief claimed by way of cancellation of sale-deed subsequently executed.* Where a suit was primarily a suit for specific performance of a contract to sell certain property to the plaintiffs, but also asked for the cancellation of a subsequent sale-deed of the property in favour of certain defendants, it was *held* that the latter relief was merely incidental to the former and its valuation would not affect the jurisdiction of the Appellate Court *Pirthi Singh* v. *Maru Singh, 8 All. L. J. 266,* distinguished. NITYA NAND *v.* BISHAN LAL (1911) . . . I. L. R. 33 All. 634

3. ——— *Appeal, jurisdiction not questioned in—Jurisdiction—Court—Consent of the parties as to jurisdiction—Suit of value beyond the jurisdiction of the Court—Trial of suit—Jurisdiction cannot be questioned in appeal—Evidence Act (I of 1872), s. 58.* The plaintiffs filed a suit for partition in the Court of the Subordinate Judge, First Class, valuing their claim at an amount which made the suit triable by that Court alone. The Judge, however, made over the trial of the suit to the Joint Subordinate Judge. In the latter Court, neither party raised any objection on the ground of jurisdiction; nor was any issue raised relating to it. The trial proceeded on merits: and

APPEAL—*contd.*

3. JURISDICTION—*concld.*

a decree was passed in favour of plaintiffs. The defendant appealed to the lower Appellate Court, where he, for the first time, raised the question of jurisdiction on the strength of the market value stated in the plaint. The objection was overruled. On appeal:—*Held*, that the market value stated in the plaint *primâ facie* determined the jurisdiction. *Held*, further, that as neither party raised any question as to want of jurisdiction in the first Court, and as they by their conduct and silence treated the market value to be of the amount sufficient to give jurisdiction to the Court, they dispensed with proof on the question by their tacit admissions and thus the principle of law laid down in s 58 of the Indian Evidence Act came into operation and prevented the result of the statement of the market value in the plaint As a rule, parties cannot by consent give jurisdiction where none exists This rule applies only where the law confers no jurisdiction. It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question as to jurisdiction, where that question depends on facts to be ascertained. JOSE ANTONIO *v* FRANCISCO ANTONIO (1910) . . . . **I. L. R. 35 Bom. 24**

4. PRIVATE AWARD.

——— *Private award—Civil Procedure Code (Act XIV of 1882), s. 525—Order rejecting application to file award made out of Court—Rules of Evidence* An appeal lies against an order refusing to grant an application to file an award made between the parties without intervention of the Court. *Sheo Sahi Mahton* v. *Kirtarth Bhagat, 7 C. L. J. 486*, followed. *Basant Lal* v. *Kunji Lal, I. L R 28 All. 21*, not followed. Proceedings contemplated by s. 525 of the Code of Civil Procedure are proceedings of a private nature, to which the rules of evidence cannot be strictly applied. RAMDHARI SAHU *v* RAM CHARITTER SAHU (1910) . . . **I. L. R. 38 Calc. 143**

5. REMAND.

——— *Civil Procedure Code (Act V of 1908), s. 105, cl. (2), O. XLI, rr 23, 25—Remand order—Appeal if lies after suit is finally disposed of on appeal* Where a suit has been remanded on appeal, an appeal from the order after the suit has been taken up by the first Court on remand and finally disposed of is incompetent. *Madhu Sudan Sen* v. *Kamini Kanta Sen, I. L. R 32 Calc. 1023 : s.c 9 C W N 895; Barkantha Nath Dey* v. *Nawab Salimullah, 12 C.W N. 590 , Mackenzie* v. *Narsingh Sahai, I. L R 36 Calc. 762*, followed. *Uman Konwari* v. *Janbandhan, I L. R 30 All. 479*, not followed. *Palani Chetty* v. *Rangiadoss Naidu, I. L. R. 32 Mad. 83*, distinguished S. 105, cl .(2) of the new Civil Procedure Code, h as no bearing on this question but applies to the converse case. JANAKI NATH RAY CHOWDHURY *v.* PROMOTHA NATH ROY CHOWDHURY (1911) **15 C. W. N. 830**

APPEAL—*concld.*

6. RIGHT OF APPEAL.

——— *Appeal—Order in execution of decree—Order refusing decree-holder permission to bid at sale in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 2, 244, cl. (c), 294, cl. (16), 540, 588 and 617—Act VII of 1888, s. 75—Revision where no appeal lies.* No appeal lies from an order refusing an application by a decree-holder for permission to bid at a sale in execution of a decree. *Jodoonath Mundul* v. *Brojo Mohun Ghose, I. L R 13 Calc 174*, approved. KO THA HNYIN *v.* MA HNIN I (1911) **I. L. R. 38 Calc 717**

APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE, 1908, s. 109, CL. (*a*) . . . **15 C. W. N. 60**

See CIVIL PROCEDURE CODE, 1908, s. 115. **15 C. W. N. 848**

APPEAL UNDER LETTERS PATENT.

See INSOLVENCY IN PRESIDENCY TOWN. **I. L. R. 34 Mad. 121**

APPELLATE COURT.

——— change of—

See JURISDICTION. **I. L. R. 38 Calc. 639**

——— power of—

See HINDU LAW—LEGAL NECESSITY. **I. L. R 38 Calc. 721**

——— *Power to alter conviction under s 147, Penal Code, to one under s. 323, when the common object charged was other than to cause hurt—Issue of Rule and order for bail by the High Court—Duty of the Magistrate on receiving intimation of the same by telegram from Counsel—Delay in transmitting the bail orders—Criminal Procedure Code (Act V of 1898), s 423* The Appellate Court cannot alter a conviction of rioting under s. 147 of the Penal Code, with the common object to ejecting the complainants from their homestead lands, to one under s 323 thereof When a rule is issued by the High Court and the proceedings stayed, and, *à fortiori*, when an order for bail is made, the Magistrate, on receiving reliable information thereof, such as a telegram from the counsel in the case, is bound to act on it immediately, though he has not received the High Court's orders at the time. *Ratnessari Pershad* v. *Empress, 2 C W. N. 498*, followed. All bail orders must be issued from the office of the High Court on the same day they are passed, irrespective of the written order on the record. LAL MOHAN MANDAL *v* KALI KISHORE BHUIMALI (1910) . . **I. L R. 38 Calc. 293**

APPLICATION.

——— verification of—

See FALSE EVIDENCE. **I. L. R. 38 Calc. 368**

APPOINTMENT.

See STAMP ACT, 1899, s 2, SCH. I, ART. 7.
I. L. R. 35 Bom. 444

APPORTIONMENT.

See OFFERINGS TO DEITY.
I L. R. 38 Calc. 387

APPRENTICE.

——— unpaid, if public servant—

See PENAL CODE, S. 21 . 15 C. W. N. 319

APPROPRIATION.

See VENDOR AND SUB-VENDOR
I. L R 38 Calc. 127

——— of payment—

See CONTRACT ACT, SS 59, 60.
15 C. W. N. 443

See SALE FOR ARREARS OF REVENUE
I. L. R. 38 Calc. 537

ARBITRATION.

Col.

1. REFERENCE TO ARBITRATION . . 19
2. AWARD 20

See ARBITRATION ACT (IX OF 1899), S. 10 . . I L. R. 35 Bom 130

See CIVIL PROCEDURE CODE, 1908, SS. 99, 107 . . I. L. R. 33 All 645

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S 15B . I. L. R 35 Bom 310

See MAHOMEDAN LAW—HUSBAND AND WIFE . . I. L R. 33 All. 683

See SPECIFIC RELIEF ACT (I OF 1877), S. 21.
I. L. R. 33 All. 315

1. REFERENCE TO ARBITRATION.

——— *Arbitrator refusing to act—Compromise of suit and decree in terms of compromise—Compromise stating matters in dispute and nominating arbitrators to decide them—Power of Court on arbitrator refusing to act—Civil Procedure Code, 1882, ss. 375, 506, 508, 510—Court determining matters referred to arbitration.* S. 510 of the Code of Civil Procedure (Act XIV of 1882), which provides that "if an arbitrator refuses to act the Court may in its discretion appoint a new arbitrator . . . . or make an order superseding the arbitration, and in such case shall proceed with the suit," is applicable even if the person appointed arbitrator has not accepted office before refusing to act. When he has been nominated by the parties his refusal to act is signified as clearly by his refusal to accept nomination as by any other course he could pursue; and any other construction would defeat the provisions of the Act *Pugardin Ravutan* v. *Moidinsa Ravutan, I L R. 6 Mad 414*, and *Bepin Behari Chowdhry* v. *Annoda Prosad Mullick, I. L. R. 18 Calc. 324*, disapproved of.

ARBITRATION—*contd.*

1. REFERENCE TO ARBITRATION—*concld.*

In the present case the parties had compromised the suit, and had stated in the instrument of compromise the matters in dispute, and had each nominated therein a person as arbitrator to decide them. A decree in terms of the compromise was made by the Court and the matters were referred to the arbitrators named for their decision One of them refused to act, and the party whose nominee he was declined to make another nomination. The District Judge in the exercise of his discretion under s. 510 of the Code thereupon himself determined the matters submitted to the arbitrators, thus practically superseding the arbitration His decision was confirmed by the Court of the Judicial Commissioner. *Held* (reversing the decision of the Courts in India), that the District Judge should, under s. 510, have appointed a new arbitrator, which he had power to do notwithstanding that the arbitrator refusing to act had not first consented to do so, and he was not precluded from making such appointment by the fact that the party whose arbitrator had refused to act declined to assist the Court by suggesting another name The Court could not "proceed with the suit," which had been put an end to by the compromise, the decree on which was final; and it had no power except by consent of parties to itself decide the matters referred to arbitration. That rights, having been remitted to one tribunal, had been decided by another, was a fatal objection to the procedure adopted SADIQ HUSAIN v NAZIR BEGAM (1911) . I. L R. 33 All 743

2. AWARD.

1. ——— *Award—Bonâ fide mistake of law committed by arbitrator—Minor party receiving a smaller share—Award binding upon the minor.* The arbitrators to whom a dispute was referred by parties, one of whom was a minor, took *bonâ fide* an erroneous view of law and ordered an unequal division of the property in dispute, awarding the smaller share to the minor The lower Court set aside the award on the grounds that the arbitrators had taken an erroneous view of the law, and that as the minor had received a smaller share under the award it was not to his benefit, and therefore not binding upon him —*Held*, that the award was valid and binding upon the minor. The validity of the award must be determined according to the circumstances as they existed at its date, and not by what transpired some years after it had been passed by the arbitrators *Rajunder Narain Rae* v. *Bijai Govind Singh, 2 Moo I. A. 181, 249, 251*, followed. SAKRAPPA BIN LINGAPPA v. SHIVAPPA (1910) . I. L. R. 35 Bom. 153

2. ——— *Award made after expiry of time fixed by Court—Application for enlargement of time to file award—Civil Procedure Codes (Act XIV of 1882), s 521 (c), (Act V of 1908), s. 148, Sch II, s 15 (c).* An award was made after the time allowed by the Court had expired. On an application for enlarging the timing for making such award:—*Held*, that the Court had no

ARBITRATION—*concld.*

2. AWARD—*concld.*

power to grant the application *Raja Har Narain Singh* v. *Chaudhrain Bhagwant Kuar, I. L. R 13 All. 300*, followed. *Held*, further, that where the time for making an award had expired, and no award had been made, s. 148 of the Civil Procedure Code (Act V of 1908) gives the Court power to extend the time for the making of the award, notwithstanding that it had expired at the time of the application; but that section does not enable the Court to extend the time for the doing of a particular act, when in truth and in fact the act has already been done. SHIB KRISHNA DAWN & Co *v.* SATISH CHUNDER DUTT (1911) . . . **I. L. R. 38 Calc. 522**

ARBITRATION ACT (IX OF 1899).

———— s. 10—*Arbitration—Statement of special case for opinion of Court—Appeal from order of Court—Civil Procedure Code (Act V of 1908), s 104, and Sch. II, r. 11* In a suit filed for partition of joint family property, the parties agreed to refer the matter to arbitration, and a consent order of reference was taken A similar agreement referred to the same arbitrators questions as to the partition of such immoveable property as was outside the jurisdiction of the Court in the suit. The arbitrators disagreed on certain points, but, instead of referring their differences (as the agreements of reference authorised them to do) to an umpire, they submitted their own opinions in the form of a special case for the opinion of the Court. In doing so they purported to act under the provisions of the Civil Procedure Code (Act V of 1908), Sch. II, r 11, and of the Indian Arbitration Act (IX of 1899), s. 10 (*b*). The matter was decided by the Chamber Judge, and an appeal was preferred against the decision · *Held*, that no appeal lay. Inasmuch as the special case was in no sense an award, it did not come within the Civil Procedure Code (Act V of 1908), Sch. II, r 11, but, in so far as it related to the agreement which was not the subject of the Court's order, it fell under the Indian Arbitration Act (IX of 1899), s. 10 (*b*). PURSHOTUMDAS RAMGOPAL *v.* RAMGOPAL HIRALAL (1910) **I. L. R. 35 Bom. 130**

———— ss. 11 and 15—"*Award*"—*Civil Procedure Code (Act V of 1908), Sch. I, O. XXI, r. 29.* An award filed in Court under s 11 of the Indian Arbitration Act (IX of 1899) is nothing more than an award, although it is enforceable as if it were a decree Execution of such an award cannot be stayed under O. XXI, r. 29 of the Civil Procedure Code (Act V of 1908). TRIBHUWANDAS KALLIANDAS GAJJAR *v.* JIVANCHAND LALLUBHAI AND Co. (1910) . . . **I. L. R. 35 Bom 196**

ARBITRATION BY COURT.

———— *Submission of the questions in dispute to Court for determination—Award—Review—Appeal—Jurisdiction—Civil Procedure Codes (Act XIV of 1882) s. 622 : (Act V of 1908), s. 115.* When, after the hearing of a suit had commenced before a Munsif, both parties agreed to leave the questions in dispute between them to the determination of the Court after the Court had made a local inspection, and also agreed not to raise any objection to the same, or to prefer an appeal : *Held*, that the decision of the Munsif was in the nature of an award and that he could not alter the award when once made, or review his own decision. *Dutto Singh* v. *Dosad Bahadur Singh, I. L. R 9 Calc. 575*, referred to. *Held*, further, that no appeal lay to the District Judge, and the order of the District Judge in entertaining the appeal and making the order of remand was without jurisdiction *Sayad Zain* v. *Kalabhai, I. L R. 23 Bom. 752*, followed. *Held*, further, that no appeal lay from the decision of the District Judge to this Court, but the High Court could interfere *suo motu* under s 622 of the Civil Procedure Code (Act XIV of 1882) corresponding with s 115 of the new Code (Act V of 1908). BAIKANTA NATH GOSWAMI *v* SITA NATH GOSWAMI (1911) . . . . **I L. R. 38 Calc. 421**

ARBITRATOR.

See CONTRACT . . **15 C. W N. 981**

ARMS ACT (XI OF 1878).

———— s 19 (f)—*Accused not in present possession if may be convicted—Person liable to punishment under cl. (f) of s 19.* Where the petitioner having been in possession of a gun for some time made it over a year and a half ago to another person in whose possession the gun was without a license : *Held*, that the petitioner could not be convicted of an offence under s 19, cl. (*f*) of the Indian Arms Act The only person who can be punished under cl (*f*) is the person who has in his possession or under his control any arm in contravention of the provisions of ss. 14 and 15 AKHIL NATH DIT *v.* EMPEROR (1910) . **15 C. W. N. 440**

ARREST.

See CIVIL PROCEDURE CODE, 1882, ss. 341 AND 349 . . **I. L. R. 33 All. 279**

See CRIMINAL PROCEDURE CODE. **I. L R. 35 Bom. 225**

ARTICLE IN NEWSPAPER.

See SEDITION . **I. L R. 38 Calc. 253**

ASSESSMENT.

See CALCUTTA MUNICIPAL ACT, s 151, CL. (*b*) . . . **15 C W. N. 84**

See LAND REVENUE CODE, s. 3, CL. (19). **I L. R. 35 Bom. 462**

———— of rent by Settlement Officer—

See RENT . . **I. L. R. 38 Calc. 278**

ASSETS.

———— rateable distribution of—

See CIVIL PROCEDURE CODE, 1908, s. 73. **15 C. W. N. 872**

ASSIGNMENT

See CHAMPERTY AND MAINTENANCE. **I. L. R. 33 All. 626**

ASSIGNMENT—*concld.*

——— by depositor—

——— *Deposit of money —Stakeholder—Valid assignment by depositor to his creditor—Neglect of the creditor to recover—Creditor chargeable with the amount.* Where money deposited with a stakeholder was validly assigned by the depositor to his creditor in satisfaction of his debt and the creditor, being able to recover the amount so assigned, neglected to do so he was chargeable with the amount. GANPATRAO BALKRISHNA BHIDE *v.* MAHARAJA MADHAVRAO SINDE SARKAR (1910) . . I. L. R. 35 Bom 1

——— of decree—

See MAINTENANCE ALLOWANCE, I. L R. 38 Calc. 13

ATTACHMENT.

See ATTACHMENT BEFORE JUDGMENT.

See BENGAL MUNICIPAL ACT, S 321 15 C. W N. 519

See BENGAL TENANCY ACT, S 170 15 C. W. N. 820

See CIVIL PROCEDURE CODE, 1882, SS. 268, 274 . . I. L. R. 35 Bom. 288

See CIVIL PROCEDURE CODE, 1882, SS 282, 287 . . I. L. R. 35 Bom 275

See CIVIL PROCEDURE CODE, 1908, S 60. I L R. 33 All. 529

See CIVIL PROCEDURE CODE, 1908, S 115 I L. R. 35 Bom. 516

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 14 I L R 35 Bom. 248

See CRIMINAL PROCEDURE CODE, S. 146. 15 C. W. N. 163

See EXECUTION OF DECREE. I L. R 38 Calc. 482 I. L R 33 All. 306

See MAINTENANCE ALLOWANCE. I. L. R. 38 Calc. 13

——— *Civil Procedure Code (Act XIV of 1882), ss. 256, 488 and 490—Attachment before judgment—Omission to take objection that the attached property was not saleable—The effect of such omission in subsequent execution proceedings.* An attachment before judgment does not, for all purposes, stand on the same footing as an attachment in execution proceedings An omission on the part of the defendant to take exception to the validity of the attachment on the ground that the property sought to be attached is not transferable, at the time when the application is made for attachment before judgment, does not operate as a bar to the investigation of the objection when an application has been made for execution of the decree made in the suit. BASIRAM MALO *v.* KATTYAYANI DEBI (1911) . I. L R. 38 Calc. 448

ATTACHMENT BEFORE JUDGMENT.

See ATTACHMENT I. L. R. 38 Calc. 448

ATTACK ON POLITICAL PARTY.

See SEDITION . I. L. R. 38 Calc. 253

AUCTION-PURCHASER.

See CIVIL PROCEDURE CODE, 1882, SS. 282, 287 . . I. L. R. 35 Bom. 275

See EXECUTION OF DECREE I. L. R. 38 Calc. 622

——— liability of—

See SALE FOR ARREARS OF REVENUE. I L. R. 38 Calc. 537

——— suit by—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 91. I. L. R. 35 Bom. 29

AWARD.

See ARBITRATION—AWARD

See ARBITRATION BY COURT. I. L. R. 38 Calc. 421

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 15B . I. L. R. 35 Bom. 310

See LAND ACQUISITION I. L. R. 38 Calc. 230

See LAND ACQUISITION ACT (I OF 1894), S. 18 . . I. L. R. 35 Bom. 146

See MAHOMEDAN LAW—HUSBAND AND WIFE . . I. L. R. 33 All 683

——— filing of—

See APPEAL . I L. R. 38 Calc. 143

——— made after expiry of time—

See ARBITRATION I. L. R. 38 Calc. 522

1. ——— *Indian Arbitration Act (IX of 1899), ss. 11 and 15—Civil Procedure Code (Act V of 1908), Sch. I, O. XXI, r. 29* An award filed in Court under s 11 of the Indian Arbitration Act (IX of 1899) is nothing more than an award, although it is enforceable as if it were a decree. Execution of such an award cannot be stayed under O XXI, r. 29 of the Civil Procedure Code (Act V of 1908) TRIBHUWANDAS KALLIANDAS GAJJAR *v.* JIVANCHAND LALLUBHAI AND CO. (1910) . . . I. L. R. 35 Bom. 196

2. ——— *Refusal of Court to file a private award—Subsequent suit to enforce terms of award—Res judicata. Held,* that the refusal of a Court to file a private award will not operate as *res judicata* in respect of a subsequent suit brought to enforce the award. *Kunji Lal* v. *Durga Prasad, I. L. R. 32 All 484,* followed. *Basant Lal* v. *Kunji Lal, I. L. R 28 All. 21,* referred to. SHIB CHANDRA DAS *v.* RAM CHANDRA SARUP (1911) I L R. 33 All. 490

B

BABASHAI AND SHIKKAI COINS.

See ACTIO PERSONALIS MORITUR CUM PERSONA . I. L. R. 35 Bom. 12

BAD LIVELIHOOD.

See PREVIOUS CONVICTIONS, EVIDENCE OF. I. L. R. 38 Calc. 408

BAIL.

See EXTRADITION ACT, S. 3. 15 C. W. N. 736

——— delay in transmitting bail orders—

See APPELLATE COURT. I. L. R. 38 Calc. 293

BANKER AND CUSTOMER.

See INSOLVENCY I. L. R. 34 Mad. 125

——— *Fiduciary relationship —Demand for repayment—Effect of.* Money held by a banker after his customer has demanded repayment is not held by him in a fiduciary capacity. A creditor cannot transform his debtor into a trustee by merely demanding repayment of the debt OFFICIAL ASSIGNEE OF MADRAS *v.* KRISHNA BHATTA (1910) . . I. L. R. 34 Mad. 128

BANKRUPTCY ACT, 1883 (46 & 47 VICT., C. 52).

——— ss. 27, 118.

See INSOLVENCY . I. L. R. 38 Calc. 542

BARADARAN JAGIR (ORISSA).

See RENT . . I. L. R. 38 Calc. 278

BARGAIN.

——— onerous but not unconscionable—

See SPECIFIC PERFORMANCE. I. L. R. 38 Calc. 805

BARODA COURT.

——— decree in—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 48, AND SCH. I, O. XXI. I. L. R. 35 Bom. 103

BENAMI PURCHASE.

See CIVIL PROCEDURE CODES, 1882, S. 317; 1908, S. 66 . I. L. R. 35 Bom. 342

See PUTNI . . . 15 C. W. N. 5

See SALE . . . 15 C. W. N. 648

BENAMIDAR.

See VENDOR AND PURCHASER. I. L. R. 35 Bom. 269

BENGAL ACTS.

——— 1859—XI.

See REVENUE SALE LAW.

——— 1870—VI.

See CHOWKIDARI ACT.

BENGAL ACTS—*concld.*

——— 1876—VI.

See CHOTA NAGPUR ENCUMBERED ESTATES ACT.

——— VII.

See LAND REGISTRATION ACT.

——— VIII.

See ESTATES PARTITION ACT.

——— 1880—IX.

See BENGAL CESS ACT.

——— 1882—II.

See BENGAL EMBANKMENT ACT.

——— 1884—III.

See BENGAL MUNICIPAL ACT.

——— 1897—V.

See ESTATES PARTITION ACT.

——— 1898—III.

See BENGAL TENANCY AMENDMENT ACT.

——— 1899—III.

See CALCUTTA MUNICIPAL ACT.

——— 1903—III.

See BENGAL MOTOR CAR AND CYCLE ACT.

——— 1906—IV.

See CENTRAL PROVINCES LAND REVENUE AMENDMENT ACT.

——— 1908—VI.

See CHOTA NAGPUR TENANCY ACT.

——— 1909—III.

See CHOTA NAGPUR ENCUMBERED ESTATES AMENDMENT ACT.

BENGAL EMBANKMENT ACT (BENG. II OF 1882).

——— s. 76, cls. (*a*), (*b*).

See EMBANKMENT. I. L. R. 38 Calc. 413

BENGAL MOTOR CAR AND CYCLE ACT (BENG. III OF 1903).

——— ss. 3, 4.

See MOTOR CAR . I. L. R. 38 Calc. 415

BENGAL MUNICIPAL ACT (III OF 1884).

——— ss. 6, 15, 103, 105.

See MUNICIPAL ELECTION. I. L. R. 38 Calc. 501

BENGAL MUNICIPAL ACT (III OF 1884)—*concld.*

——— s. 321—*Bengal Municipal Act (III of 1884), ss 321, 322—Latrine tax, assessment when ultra vires—Valuation of premises for purposes of assessment.* The assessment and levy of latrine tax when no scale for the levy thereof has been fixed by the Commissioners at a meeting as enjoined by s 321 of the Bengal Municipal Act would be *ultra vires*. The meaning of the proviso to s. 322 of the Act is that when a shop-keeper lives elsewhere, and pays latrine tax for his house he shall not be made to pay again for his shop unless the shop contains a privy or cess-pool Where the owner of the house lived in the upper storey thereof and let out eight shops in the verandah of the ground floor, none of which were thus occupied by himself: *Held*, that he could not claim exemption under the proviso to s. 322, and the house including the shops was liable to be valued for the purpose of the assessment of latrine tax. BECHU RAM *v.* THE CHAIRMAN, CHAPRA MUNICIPALITY (1911) . . . . . **15 C. W. N. 519**

BENGAL REGULATIONS.

——— **1793—XV, s. 10.**

See MORTGAGE . **I. L. R. 33 All. 97**

——— **1825—VI—s. 2**—*Joint Magistrate—Jurisdiction—Criminal Procedure Code, s. 435—Power of Sessions Judge to make reference* It is only the Collector who can take action and impose a fine under Bengal Regulation VI of 1885. A Joint Magistrate has no jurisdiction under s. 2 of the Regulation, even though the case may have been made over to him by the District Magistrate. EMPEROR *v.* MUHAMMAD ALAM (1910) **I. L. R. 33 All. 84**

BENGAL TENANCY ACT (VIII OF 1885).

——— **ss. 3 (5), 104, 107.**

See RENT . **I. L. R. 38 Calc. 278**

1. ——— s. 5—*Tenure-holder or raiyat—Construction of lease—Presumption* In deciding the question of the character of a holding not only the origin of the tenancy but also the subsequent conduct of the parties should be taken into consideration. Where the original area of the lands taken was considerably more than what could be cultivated by the tenant himself or by members of his family or by hired servants or with the aid of partners, and the tenant himself was not a member of the cultivating class and where subsequent settlements were also of large areas and the total area held by the tenants exceeded 1,300 bighas—*Held*, that these circumstances led to the conclusion that these lands were taken for the purpose of settling tenants on them and that the lease was a tenure. Where a lease stated "you shall enjoy the jungle lands on bringing the same under cultivation and on causing the same to be held in jote by other persons:" *Held*, that there was nothing in these words to render it improbable that it was intended that the land should be brought under cultivation by establishing tenants thereon MIDNAPUR ZEMINDARY CO. LD, *v.* SHAM LAL MITTER (1910) . **15 C. W. N. 218**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 5—*concld.*

2. ——— s. 5 (5)—*Bengal Tenancy Act, s. 5 (5)—Tenure-holder or raiyat—Original terms, when unambiguous, if may be altered by conduct* Where the terms of the original lease are not ambiguous the question whether the tenant is a tenure-holder or a raiyat must be determined from those terms and without reference to the subsequent conduct of the parties. The nature of the tenancy cannot be altered by the subsequent conduct of the parties to the detriment of under-tenants PROMOTHO NATH KUMAR *v* NILMANI KUMAR (1911) . . . **15 C. W. N. 902**

3. ——— *Erroneous entry in Settlement Rent Roll as to tenant's status—Suit by tenant for declaration of status—Limitation—Tenure-holder or raiyat, tenant whether—Original purpose ascertained, evidence of subsequent conduct and surrounding circumstances to show change of purpose whether admissible—Change of status by agreement—Area, presumption from—Rebuttal Held*, that the tenant who was admittedly in occupation of 1,815 bighas of land had succeeded in rebutting the presumption under s 5 (5) of the Bengal Tenancy Act and established that he was an occupancy raiyat. *Per* N. CHATTERJEA, *J*—It is only in cases where the terms of the lease creating the tenancy are ambiguous or in cases where there is no written lease and it is not clear what the original purpose of the tenancy was, that the Court should look into the subsequent conduct of the parties and surrounding circumstances to determine the nature of the tenancy. Once, however, the original grant is clearly shown to be raiyati by a lease unambiguous in its terms, or by other evidence where there is no written lease, the mere fact that the tenants subsequently sublet the land would not alter the character of the tenancy. There is nothing to prevent the landlord and tenant notwithstanding the existence of an unambiguous lease to alter the original nature of the tenancy by agreement, and there may possibly be cases where subsequent conduct may be set up as evidence of such agreement. But where no such agreement is set up and it is clearly proved that the land was originally acquired by the tenant for cultivating it himself or by hired servants or by members of his family, the character of the tenancy is not affected by the mere fact that the land was subsequently let out to tenants. *Midnapur Zemindary Co., Ld*, v. *Sham Lal Mitter, 15 C. W. N. 218*, explained PROMODA NATH ROY *v.* ASIRUDDIN MANDAL (1911) . **15 C. W. N. 896**

——— **ss. 5 (5), 116.**

See LANDLORD AND TENANT.

I. L. R. 38 Calc. 432

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 7—*Lease for reclamation of jungle—Rate fixed in perpetuity, rent varying with area—Nature of tenancy, question of law—Enhancement.* Where a lease, found to be heritable, contained a stipulation providing for assessment of additional rent for excess lands found on measurement, at the rate of 5 as. 4 p. per bigha (the rate fixed for the lands leased), and was from time to time renewed as additional areas were reclaimed and included in the lease, subject to the same stipulation, and in this way the same rate of rent prevailed for over 60 years, though the total rent went on increasing with the increase in the area, and it appeared that during this time there was one instance of transfer and several of succession:—*Held*, that the proper inference to be drawn was that the rate of rent was permanently fixed. *Robert Watson & Co.* v *Radha Nath Singh*, *1 C L J. 572*, referred to. That the rate being fixed by contract, no enhancement could be allowed under s. 7, Bengal Tenancy Act. The question as to the nature of the tenancy was a question of law. *Sulatu Das* v. *Jadu Nath*, *8 C. W. N. 774*. RAMDAYAL GIRI *v.* MIDNAPUR ZEMINDARY CO., LD (1910) . . . . . **15 C. W. N 263**

——— ss. 7, 30.

See BENGAL TENANCY ACT, s. 188.
I. L. R. 38 Calc. 270

——— s. 52—*Civil Procedure Code (Act V of 1908), O. XLI, r. 12—Appeal if may be limited to specified grounds—Jurisdiction of Appellate Court—Bengal Tenancy Act (VIII of 1885), ss 52, 105 and 106—Enhancement of rent for increase of area within specified boundaries—Increase of area, proof of* In a suit for enhancement of rent on the ground of any increase in area, the landlord must prove the area for which rent has been previously paid as well as the area now held by the tenant and that such area is in excess of the original area. Where, therefore, a landlord proved that lands were once measured according to a known standard, that the rent was assessed on that measurement, that the area as well as the rent payable was entered in the *kabuliyats* and that the area of the lands measured by the same standard is in excess of the original area: *Held*, that unless it is established that the rent payable was a consolidated rent for lands within specified boundaries irrespective of the precise quantity, the landlord was entitled to claim additional rent. *Gouri Pattra* v *H. R Reily*, *I. L. R. 20 Calc. 579*; *Rajendra Lal Goswami* v. *Chunder Bhusan*, *6 C. W. N. 318*, explained and distinguished *Rajendra Lal Goswami* v. *Chunder Bhusan*, *6 C. W. N. 318*, *Surjakant* v. *Baneswar*, *I. L R 24 Calc. 251*, *Rajkumar* v. *Ram Lal*, *5 C. L. J. 538*, referred to. Where it is specifically shown that the area of a land was ascertained by measurement and rent assessed on such measurement, the mere fact that boundaries of the land are mentioned in the *kabuliyat* does not exclude the operation of s. 52, Bengal Tenancy Act. In settling additional rent for increased

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 52—*concld.*

area it is open to the Settlement Officer in consideration of possible errors in the original measurement to allow the enhancement at a somewhat reduced rate. LUKHI NARAIN SERWOJI *v.* SRI RAM CHANDRA BHUIYA (1911) . **15 C. W. N. 921**

——— s. 60.

See LAND REGISTRATION ACT (VII OF 1876), SS 78, 81.
I. L. R. 38 Calc. 512

——— s. 105. Where in a proceeding under s. 105, Bengal Tenancy Act, questions are raised and decided which properly fall within s. 106, a second appeal lies *Pirthee Chand* v *Basarat Ali*, *I. L. R. 27 Calc 30*, followed. LUKHI NARAIN SEROWJI *v.* SRI RAM CHANDRA BHUIYA (1911)
15 C. W. N. 921

1. ——— s. 106—*Bengal Tenancy Act (VIII of 1885), ss 103B, 106, 109, 111A—Record-of-rights—Suit to declare entry erroneous and for establishment of title—Maintainability.* The failure of a person to institute a suit under s. 106 of the Bengal Tenancy Act for correction of an entry in the record-of-rights is no bar to his instituting a suit in the Civil Court for the establishment of his title. *Jogendra Nath* v. *Krishna Pramada*, *12 C. W. N. 1032 s.c I L. R 35 Calc. 1013*, distinguished *Gulab Misser* v. *Kalanand Singh*, *12 C. L J. 107 · s c 14 C W. N. 884*, and *Pandab Dowari* v. *Ananda Kisun*, *14 C. W. N. 897*, referred to MUKTI NATH THAKUR *v.* RAMESWAR SINGH (1910) . . . **15 C. W. N. 57**

2. ——— *Suit under, proper scope of—Suit for ejectment if can be brought under this section.* Where plaintiff not only seeks for the correction of an entry in the record-of-rights in favour of the defendant but also for recovery of possession from the latter who, he concedes, has been in possession from before the date of final publication—*Held*, that these reliefs could not properly be secured by a suit under s. 106, Bengal Tenancy Act, and the proper course for the plaintiff was to bring a civil suit As between landlords of neighbouring estates the only question that can be raised in a proceeding under s 106 is as to possession at the date of the final publication. *Mohunt Padmalab Ramanuj Das* v. *Lukmi Rani*, *10 C. W. N. 8*, and *Jogendra Nath Ray* v. *Krishna Pramoda Dasi*, *12 C. W. N 1032*, referred to. KALI SUNDARI DEBYA *v* GIRIJA SANKAR SANYAL (1911) . . . **15 C. W. N. 974**

——— s. 111A. Where no question as to entry of a rent settled or an omission to settle rent is concerned a suit by a tenant for a declaration that an entry in the record-of-rights describing him as a tenure-holder is erroneous and for a declaration that he is an occupancy raiyat is not a suit under s. 104H but falls within the category of suits alluded to in the proviso to s. 111A of the Bengal Tenancy Act

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 111A—*concld.***

and may be brought within 6 years. PRAMADA NATH RAY *v* ASIRUDDI MONDAL (1911) **15 C. W. N. 896**

——— **s. 153**—*Rent-decree—Order in execution passed by officer not specially authorised, if appealable—Ex parte decree set aside on deposit—Money deposited to be applied in satisfaction of decree ultimately passed in landlord's favour.* A decree for rent was passed by an officer empowered to exercise final jurisdiction in the matter under s. 153 of the Bengal Tenancy Act: *Held*, that the section is no bar to an appeal from an order passed in execution of the decree by an officer not so empowered. Whether an appeal lies or not must be determined with reference to the qualification of the officer who passes the order against which the appeal is preferred. SHEO PARSAN RAY *v* BISHEN PARGASH NARAIN (1911) . . . **15 C. W. N. 760**

——— **s. 153A.** Although s. 153A of the Bengal Tenancy Act does not specifically prescribe the mode of application of the money deposited by the person at whose instance the *ex parte* decree has been set aside, the Legislature clearly intended that the landlord, in whose favour a decree is ultimately made on the retrial, should apply the sum deposited by the judgment-debtor to his credit towards satisfaction of the decree and execute the decree for the balance left, if any. SHEO PARSAN ROY *v* BESHEN PARGASH NARAIN (1911) . **15 C. W. N. 760**

——— **ss. 164, 165, 167**

See MORTGAGE . **I. L. R. 38 Calc. 923**

——— **s. 170**—*Civil Procedure Code (Act V of 1908), O. XXI, r. 4—Claim, if may be preferred on attachment under rent decree—Bengal Tenancy Act (VIII of 1885 and I of 1907, B C), ss 107, 148A, 158B—Suit by co-sharer landlord for rent due to him when other co-sharers made parties—Decree in, if for entire rent due—Notice to other co-sharer before execution, when to be given.* Where some of the co-sharer landlords brought a suit for the amount of rent due to them, making the remaining co-sharer a party to the suit and affirmed that they had been unable to ascertain whether any sum was due to the remaining co-sharer and undertook to increase their claim and pay additional Court-fee if any sum was due to the other co-sharer: *Held*, that it was a suit for the entire amount due for the holding within the meaning of s. 170 of the Bengal Tenancy Act *Held*, further, that at any rate, in the circumstances of the case, the plaintiffs could proceed with their suit under s. 148A, Bengal Tenancy Act, and the decree obtained in such suit would under that section have the same effect as a decree in a suit brought by the entire body of landlords for rent. O XXI, r. 58 of the Civil Procedure Code had therefore no application to the case and a claim made under it could not be allowed. The absence of a notice under s. 158B, sub-s (2), was immaterial as the

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 170—*concld.***

notice if not served might be served before sale. NANDA LAL CHOWDHURI *v.* KALA CHAND CHOWDHURI (1910) . . . . **15 C. W. N. 820**

——— **s. 171.**

See PUTNI REGULATION, s. 13, CL (4). **15 C. W. N. 404**

1. ——— *Civil Procedure Code (Act V of 1908), s. 47—"Representative"—Unrecorded co-sharer, if representative of recorded co-sharer—Bengal Tenancy Act (VIII of 1885), s 173, order under, when appealable* An unrecorded co-sharer in a tenancy sold in execution of a rent decree against the recorded co-sharer is not a representative of the recorded co-sharer within s. 47 of the Civil Procedure Code. *Asgar Ali* v. *Asaboddin, 9 C W N. 134*, distinguished. It cannot be laid down generally that an order under s. 173 of the Bengal Tenancy Act is in no case appealable. Whether an appeal will lie or not will depend upon whether the question relates to the execution of the decree and whether it is between the parties to the original suit or their representatives so as to bring the order under s. 47, Civil Procedure Code. JOY TARA *v* PRAN KRISTO SEAL (1910) . . . **15 C. W. N. 512**

2. ——— *Co-tenant paying decree for rent if can have lien on co-tenant's shares.* The interest of a co-tenant is void and not voidable on sale. Where, therefore, in order to save the holding a co-sharer tenant paid up the amount due on a rent decree from his co-tenants, he acquired no lien on the share of his co-tenants. ASHUTOSH GHOSE *v.* ABINASH CHANDRA CHOWDHURI (1911) . . . . **15 C. W. N. 782**

——— **s. 188**—*Suit for enhancement of rent—Suit by one co-sharer making defendants other co-sharers who refused to join as plaintiffs—Meaning of "act together"—Suit for arrears of rent—Suits expressly authorised by Bengal Tenancy Act—Suits not requiring authority of Act—Bengal Tenancy Act, ss. 7 and 30.* The institution of a suit for enhancement of rent, being a suit authorised by the Bengal Tenancy Act (VIII of 1885), is something which "a landlord is required or authorise to do" under the Act within the meaning of s. 188, and consequently a thing in which all the "joint landlords" must "act together," that is, take common action. Such a suit, therefore, is only properly framed when all the joint landlords are made plaintiffs. It is not sufficient for one or some of the joint landlords to sue as plaintiff or plaintiffs and make those who refuse to join with him or them defendants in the suit. *Pramada Nath Roy* v *Ramani Kanta Roy, I. L R. 35 Calc 331 L. R. 35 I. A. 73*, distinguished. It is otherwise with a suit for arrears of rent, the bringing of which is not a thing which the landlord is, under the Bengal Tenancy Act, either required or authorised to do. Rent in arrear is a debt the right to recover which arises under the general law, and does not require the authority of the Bengal Tenancy Act; and that Act does not

BENGAL TENANCY ACT (VIII OF 1885)—*concld*

——— s. 188—*concld.*

authorise such a suit, though, on a decree being obtained, consequences may follow which result from the provisions of the Act, and from those provisions alone. JATINDRA NATH CHOWDHRI *v.* PRASANNA KUMAR BANERJEE (1910)
I. L. R. 38 Calc. 270

BENGAL TENANCY AMENDMENT ACT (BENG. III OF 1898).

——— s. 9.

See RENT . I. L. R. 38 Calc. 278

BEQUEST

——— to a class—

See HINDU LAW—WILL .
I. L. R. 38 Calc. 468

——— to daughters on marriage—

See WILL . . . 15 C. W. N. 121

BHAGDARI AND NARVADARI ACT (BOM. V OF 1862).

——— s. 3—*Civil Procedure Code (Act XIV of 1882), s. 424—Suit against Government—Notice—Mortgage of a narva—Collector declaring the mortgage invalid—Suit against Collector without notice.* The plaintiff filed a suit against the Collector of Kaira to obtain a declaration that an order passed by that officer under s. 3 of the Bhagdari and Narvadari Act (Bombay Act V of 1862), declaring some mortgages in plaintiff's favour null and void, was inoperative. No notice was given to the defendant as provided for by s. 424 of the Civil Procedure Code of 1882:—*Held*, that the notice required by s. 424 of the Civil Procedure Code of 1882 was necessary to be given; for the declaration was a distinct act of the Collector, done in the exercise of a statutory power and therefore in his official capacity. *Per Curiam.*—"The true test of an action for the purposes of s. 424 is whether the wrong complained of as having been done by the public officer sued amounts, *first*, to a distinct act on his part, and *secondly*, whether that act purported to have been done by him in his official capacity Both these elements must combine to render necessary the giving of notice under s. 424 as a condition precedent to suit." CHHAGANLAL KISHOREDAS *v.* THE COLLECTOR OF KAIRA (1910)
I. L. R. 35 Bom. 42

BID.

——— permission to, at sale—

See APPEAL . I. L. R. 38 Calc. 717
15 C. W. N. 862

BILLS OF SALE ACT, 1878.

——— s. 8.

See CIVIL PROCEDURE CODE, 1908, s. 115
I. L. R. 35 Bom. 516

BOARD OF REVENUE.

See MANDAMUS . I. L. R. 38 Calc. 553

BOARD OF REVENUE RULES.

See FALSE EVIDENCE .
I. L. R. 38 Calc. 368

BOMBAY ACTS.

——— 1862—V.

See BHAGDARI AND NARVADARI ACT.

——— 1869—XIV.

See CIVIL COURTS ACT (BOMBAY).

——— 1874—III.

See HEREDITARY OFFICES ACT.

——— 1879—V.

See LAND REVENUE CODE (BOMBAY).

——— XVII

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

——— 1888—VI

See GUJARAT TALUKDARS' ACT.

——— 1901—III

See DISTRICT MUNICIPAL ACT (BOMBAY).

——— 1906—II.

See MAMLATDARS' COURTS ACT.

BOMBAY LAND REVENUE CODE (V OF 1879).

See LAND REVENUE CODE, BOMBAY.

BONA-FIDE PURCHASER.

See HINDU LAW—ENDOWMENT.
I. L. R. 38 Calc. 526

See MAHOMEDAN LAW—MINOR.
I. L. R. 35 Bom. 217

BOND.

See SUCCESSION CERTIFICATE
I. L. R. 38 Calc. 182

BREACH OF CONTRACT.

——— by vendor—

See VENDOR AND PURCHASER.
I. L. R. 38 Calc. 458

BREACH OF THE PEACE.

See PROHIBITORY ORDER.
I. L. R. 38 Calc. 876

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 38 Calc. 156

BRIBERY.

——— imputation of—

See SEDITION . I. L. R. 38 Calc. 214

BUILDING.

See CANTONMENT LAND.
15 C. W. N. 909

See DISTRICT MUNICIPAL ACT (BOMBAY).
I. L. R. 35 Bom. 236 ; 412

BUNDELKHAND ENCUMBERED ESTATES ACT (I OF 1903)

———— s. 13—*Sub-mortgage by usufructuary mortgagee—Covenant to indemnify sub-mortgagee if dispossessed—Effect on such covenant of mortgagors taking advantage of the provisions of the Bundelkhand Encumbered Estates Act, 1903* The mortgagee in possession under a usufructuary mortgage executed a sub-mortgage of his mortgagee rights and covenanted with the sub-mortgagee that if during the period of the mortgage the property mortgaged, in any year, by any reason, should pass out of the possession of the sub-mortgagee, or the mortgage-deed for any reason should be declared to be invalid, he, the executant, would be liable to pay the loss sustained by the mortgagee. The mortgagors took advantage of the provisions of the Bundelkhand Encumbered Estates Act The mortgagee took no steps under the Act to realize the amount due to him on his mortgage The sub-mortgagee did prefer a claim, but it was rejected, and he did not appeal against the special Judge's order rejecting it. The sub-mortgagee was ejected from the mortgaged property, and thereafter his sons sued the mortgagee on his covenant, claiming damages on account of his ejectment *Held*, that the suit was not barred by reason of anything contained in the Bundelkhand Encumbered Estates Act, 1903. GAYA PRASAD *v.* GANGA BISHAN (1910)
I. L. R. 33 All. 138

BURDEN OF PROOF.

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 50, 54.
I. L. R. 35 Bom. 492

See EVIDENCE . I. L. R. 33 All 483

See HINDU LAW—JOINT FAMILY
I. L. R. 33 All. 677

See HINDU LAW—LEGAL NECESSITY.
I. L. R. 38 Calc. 721

See HINDU LAW—WIDOW.
I. L. R. 33 All. 342

See JURISDICTION.
I. L. R. 35 Bom. 264

See NEGOTIABLE INSTRUMENTS ACT, S. 98.
I. L. R. 33 All. 4

See TRANSFER . 15 C. W. N. 953

See WILL . . 15 C. W. N. 177

———— *Reversioner, declaratory suit by, to set aside alleged adoption—Onus on adopted son, whether reversioner entitled to immediate possession or only to declaration.* Where a reversioner, during the lifetime of the widow on whose death he will be entitled to possession, sues for a declaration that an adoption alleged to be made by her is invalid and his right as reversioner is not impeached, the burden will be on the party relying on the adoption to prove its validity as it would be in the case where the reversioner sues for immediate possession *Asharfi Kunwar* v. *Rup Chand, I L. R. 30 All. 197*, dissented from. RAJAGOPALA REDDY *v.* NATTU GOVINDA REDDI (1910)
I. L. R. 34 Mad. 329

BURGADAR.

See SPECIFIC RELIEF ACT, S. 9.
15 C. W. N. 956

BUSTEE LAND.

———— *Owner of bustee—Receiver—Liability of actual owner to carry out bustee improvements when his estate is under a Receiver appointed by the High Court—Calcutta Municipal Act (Beng. Act III of 1899), s. 408.* When a notice under s 408 of the Calcutta Municipal Act has been served on the actual owner of an estate in the hands of a Receiver appointed by the High Court, he is liable under the section as such, and not the Receiver, to carry out the requisitions made therein. It is incumbent on the owner in such a case to request the Receiver to comply with the notice, after taking the directions of the Court, and on the latter's failure to do so he should himself apply to the High Court making the Receiver a party. If the Court refuses the application, the owner would be enabled to satisfy the Magistrate that he had used all diligence to carry out the requisitions, and in the event of a conviction the penalty would be merely nominal If the owner is helpless in the matter the General Committee may proceed under the section against the occupiers. *Parker* v. *Inge, 17 Q. B. D. 584*, referred to. A Receiver appointed by the High Court is not the " owner " of the premises he holds as such, nor is he an " agent or trustee " within the definition of the term in s. 3 (*32*) of the Calcutta Municipal Act. *Fink* v. *Corporation of Calcutta, I. L. R. 30 Calc. 721*, followed CORPORATION OF CALCUTTA *v.* HAZI KASSIM ARIFF BHAM (1911)
I. L. R. 38 Calc. 714

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CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

———— s. 3, cl. 29—*Nuisance, what is.* Where the owner of a *bustee* in which there were certain private streets put up certain posts on his property which had the effect of preventing the wheel traffic passing through the *bustee* in certain directions, with the result that thereby the cleansing of the *bustee* became more expensive to the Municipality and more inconvenient to its officers. *Held*, that the owner did not thereby cause a nuisance under the Calcutta Municipal Act, so long as he did not interfere with the effective cleansing of the *bustee*. NARENDRA NATH MITTER *v.* CHAIRMAN, CORPORATION OF CALCUTTA (1910) . 15 C. W. N. 100

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*contd.*

——— s. 151, cl. (b)—*Boundary wall, if building and assessable with rates—Statutes, interpretation of—Interpretation first placed on it by those whose duty is to execute it, value of* Held, on a consideration of various provisions of the Calcutta Municipal Act, that a boundary or compound wall is not a "building" within the meaning of s 151, cl (*b*), of the Calcutta Municipal Act and is not liable to assessment of rates as such. *Corporation of Calcutta* v *Jogeshwar Laha, 8 C. W. N. 487*, referred to. Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since by those whose duty it has been to construe, execute and apply it, though such interpretation has not by any means a controlling effect upon the Courts and may, if occasion arises, have to be disregarded for cogent and persuasive reasons. *Baleshwar* v *Bhagirath, I. L. R. 35 Calc 701 s c. 12 C. W. N 657, Evanturel* v *Evanturel, L R 2 P. C 462*, referred to. CORPORATION OF CALCUTTA *v.* BENOY KRISHNA BOSE (1910) 15 C. W. N. 84

——— s. 299—"*Place lawfully set apart by Municipality for discharge of drainage*"—*Private common drain of the landlord in a bustee, right of Municipality over.* The private common drain of the landlord of a bustee set apart for the discharge of drainage, cannot be presumed to be a "place lawfully set apart for the discharge of drainage" as contemplated by s. 299 of the Calcutta Municipal Act. In a case under s. 299 there should be no presumption as to the statutory powers of the Corporation A place lawfully set apart for the use of the public by the Corporation must be a place over which the Corporation have acquired, by some procedure under the statute, a right to make use of private property as a public drain. GOBINDA CHANDRA ADDY *v* CORPORATION OF CALCUTTA (1910) . . . 15 C. W. N. 412 I. L. R. 38 Calc. 268

——— ss. 299, 574.

See DRAINAGE . I. L. R. 38 Calc. 268

——— s. 341—Coping—*Fixture, a projecting verandah supported by beams of the house, if is.* A coping of a house which forms an integral part of it being supported by the beams of the adjoining room is not a fixture within the meaning of s 341, Calcutta Municipal Act BARADA PRASANNO ROY CHOWDHURY *v.* CORPORATION OF CALCUTTA (1911) 15 C. W. N. 730

——— ss. 374, 376—*Application for execution of work neither granted nor refused—Remedy—Imprisonment in default of payment of fine, whether legal under the Act—Offence under the Municipal Act whether falls within s 64 of the Penal Code (Act XLV of 1860)* S. 374 of the Calutta Municipal Act is governed by s. 376. When the Chairman does not refuse or grant permission to execute any work, the only remedy of the applicant for such permission is to apply to the General Committee by a written request for permission to execute the work. The applicant could not under the law prefer an appeal to the General Committee unless the Chairman has refused permission. There is no authority under the Calcutta Municipal Act to impose imprisonment in default of payment of fine, at any rate for such offences to which a daily penalty is assigned in addition to the substantive fine. *Semble* All offences under the Calcutta Municipal Act may not be "offences" within the meaning of s. 64 of the Penal Code. BASANTA KUMARI DEBI *v.* THE CORPORATION OF CALCUTTA (1911) . . . . 15 C. W. N. 906

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*concld.*

——— s. 374—*concld.*

——— s. 408.

See BUSTEE LAND I. L. R. 38 Calc. 714

——— s. 632.

See NUISANCE . I. L. R. 38 Calc. 296

CANTONMENT.

See ADVERSE POSSESSION.
I. L. R. 33 All. 229

CANTONMENT LAND.

——— Resumption by Government—*Cantonment, land and building in—Tenants if owners or licensees—Permission to build, effect of—Long possession—Presumption of ownership if arises—Compensation.* On the question whether the appellants' house situated within the Poona Cantonment was held by the appellants in proprietary right or under the military or cantonment tenure so as to be resumable by the Government at their pleasure subject to the payment of compensation for buildings erected by the tenant: *Held*, that, assuming that the house existed at or before the time the cantonment was formed, there was, under the circumstances of the case, a strong probability that the owner was duly compensated along with other proprietors for the change in his position as owner to that of licensee. That permission to build bungalows though frequently given did not carry with it any sort of proprietary right and the buildings were liable to expropriation at a price to be fixed by the authorities. That, in the circumstances, mere possession or occupation of the bungalows on the site raised no presumption that the appellants or their predecessors in title were owners in fee. That the appellants were mere licensees and the land in question had been lawfully resumed by Government. GHASWALA *v.* THE SECRETARY OF STATE FOR INDIA (1911) . . 15 C. W. N. 909

CARRIERS ACT (III OF 1865).

——— ss. 6, 8, 9.

See COMMON CARRIER, LIABILITIES OF.
I. L. R. 38 Calc 28

——— s. 10.

See COMMON CARRIERS.
I. L. R. 38 Calc. 50

CAUSE OF ACTION.

See MALICIOUS PROSECUTION.
I. L. R. 38 Calc. 880

See RES JUDICATA I. L. R. 34 Mad. 97

See SECRETARY OF STATE FOR INDIA.
I. L. R. 38 Calc. 378

See SPECIFIC RELIEF ACT (I OF 1877), S. 42 . I. L. R. 33 All. 430

1. ——— Amendment of plaint—*Secretary of State for India in Council—Action in tort—Notice of suit—Civil Procedure Code (Act V of 1908), s. 80—Amendment of plaint, when not permissible—Leave to withdraw* Where notice of an action against the Secretary of State for India in Council required under s. 80 of the Civil Procedure Code, pointed to a suit based on negligence, and the original plaint proceeded on that basis, and it was subsequently sought to amend the plaint by setting up a cause of action based on nuisance:—*Held*, that such amendment of the plaint could not be permitted. Leave to withdraw suit granted. MCINERNY *v.* THE SECRETARY OF STATE FOR INDIA (1911) . I. L. R. 38 Calc. 797

2. ——— Vendor and purchaser—*Right of vendor to sue purchaser for default in paying creditors as agreed in the sale.* A vendor has a cause of action against the purchaser, when the latter commits default in paying the creditors of the vendor, as directed in the sale deed. It is not necessary to maintain such a suit that the vendor should show, that he has sustained damage at the date of suit. *Dorasinga Thevar* v. *Arunachallam Chetty, I. L. R. 23 Mad 441*, followed. *Dorasamy Thevan* v. *Lashmana Chetty, 14 Mad. L. J. 285*, not approved. ANSUR SUBBA NAYUDU *v.* BATHULA BEE BEE SAHIBA (1910) . . I. L. R. 34 Mad. 479

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881) AS AMENDED BY BENG. ACT IV OF 1906.

——— ss. 136 H & 22, cl. (b).

See APPEAL . I. L. R. 38 Calc. 391

CESS.

——— liability to—

See MINES . I. L. R. 38 Calc. 372

CESS ACT (BENG. IX OF 1880).

——— ss. 6, 72.

See MINES . I. L. R. 38 Calc. 372

CHAMPERTY AND MAINTENANCE.

——— *Agreements contrary to public policy—Assignment—Right of party to impeach. Held*, that there may be a valid transfer of property for the purpose of financing a suit upon the terms that the property or the proceeds realized from the litigation shall be divided between the transferor and transferee irrespective of the fact whether or not there was any agreement for the payment of consideration " win or lose." The

CHAMPERTY AND MAINTENANCE—*concld.*

duty of the Court in such a case is to determine whether or not the agreement is a fair agreement to supply funds and does not purport to have been made so as to be inequitable or for improper objects, as for the purpose of gambling in litigation or of injuring others by encouraging unrighteous suits *Ram Coomar Coondoo* v. *Chunder Canto Mookerjee, L R. 4 I. A 23 1 L. R. 2 Calc 233*, followed *Held*, also, that, although as a general rule where an assignee sues on his assignment and proves it, an adverse party cannot take the objection that there was no consideration, the rule is not invariable and would not apply where the transferor being a party to the litigation had never admitted the assignment, but on the contrary had pleaded that it was fictitious and without consideration. *Mani Shankar Pranjivan* v. *Bai Muli, I. L. R. 12 Bom. 686*, followed BALDEO SAHAI *v.* HARBANS (1911) I. L. R. 33 All. 626

CHARGE.

See PENAL CODE, S. 409
I. L. R. 33 All. 36

——— Charge of conspiracy—*Persons "known and unknown"* Where the accused were charged with conspiracy with persons "known and unknown":—*Held*, that if the persons were "known" they should be named in the charge EMPEROR *v.* LALIT MOHAN CHUCKERBUTTY AND OTHERS (1911) . I. L. R. 38 Calc. 559

CHARGE ON HUSBAND'S PROPERTY.

See JEWISH LAW I. L. R. 38 Calc. 708

CHARGES.

——— misjoinder of—

See CRIMINAL PROCEDURE CODE, S. 235.
15 C. W. N. 732

CHARITABLE TRUSTS.

1. ——— Trustees, acts of—*When act of majority will be binding—Estoppel—Suit by some of several trustees, when sustainable—Misjoinder—Form of decree* The rule that in the case of charitable trusts the act of the majority will be binding on the minority only applies when such act is done after full opportunity given for mutual discussion by all the members. When the act is done after mutual discussion when the minority had an opportunity to record their dissent it will be the act of the whole body; otherwise it will be the act of the majority alone and will not bind the minority. *Teramath* v. *Lakshmi, I. L. R 6 Mad. 270*, referred to. *Wilkinson* v. *Mallin, 2 Tyrwhit 544*, referred to. A company or body of persons will be estopped from questioning the validity of an act done by some only of such body or company only when such persons are held out as clothed with authority to do the act Where such persons have not unlimited power to act for the body but only the right to act within certain limits, the stranger entering into the transaction has to find

CHARITABLE TRUSTS—*concld.*

within such limits the power to transact. Where the remedial right does not accrue until the majority have after consultation signified their will, an action by some or the majority of the trustees, without consulting the others, will not be maintainable. When the right to the relief claimed has accrued to the joint trustees, the institution of a suit by some only without having consulted the remaining trustees, even where they have not perversely refused to join cannot be a ground for dismissing the suit. Although the interests of the co-trustees is joint and indivisible, it is fully represented when they are all on the record on one side or the other. *Peria Karuppan* v *Valayutham Chetti, I. L R 29 Mad 302*, referred to One trustee can sue for redemption without consulting the other trustees or making them co-plaintiffs Such misjoinder is not fatal to the suit *Karattole Edamana* v. *Unni Kannan, I. L. R. 26 Mad 649*, referred to. The proper decree in such a case would be to order the trust property to be restored to all for the benefit of the *cestui qui trust.* KUNHAN *v.* MOORTHI (1910) **I. L. R. 34 Mad. 406**

2. ———— **Madras Endowments and Escheats Regulation VII of 1817**—*Charitable Trust—The Madras Religious Endowments Act X of 18c3—The Madras Local Boards Act V of 1884, s 51—Religious Endowments Act—Powers of Board of Revenue and Taluq Board to appoint new trustee—Non-dismissal of old trustee.* Regulation VII of 1817 and Act XX of 1863 are applicable to endowments made after the Regulation as well as to prior endowments. The Board of Revenue has no power to ignore the rights of a person lawfully in office as trustee and to appoint another person in his place without dismissing him In this respect there is no difference between a hereditary and a non-hereditary trustee who is equally entitled to a freehold office. The Board of Revenue is entitled under s 51 of Act V of 1884 to make over to a local body not only its power of superintendence but also the management of any endowment. *The Chairman, Municipal Council, Rajahmundry* v. *Susurla Venkateswarlu, I. L R. 31 Mad. 111*, followed. *Nilayathakshi Ammal* v. *Taluk Board of Mayavaram, 20 Mad L. J 8*, followed. VENKATACHALA PILLAI *v* THE TALUQ BOARD, SAIDAPET (1911) . **I. L. R. 34 Mad. 375**

CHARITY.

See CIVIL PROCEDURE CODE, 1882, s 539. **I. L. R. 35 Bom. 470**

See MAHOMEDAN LAW—WAKF. **I. L. R. 33 All 400**

See TRUSTEES AND MORTGAGEES' POWERS ACT . . **I. L. R. 35 Bom. 380**

CHARTER ACT (24 & 25 VICT., C. 104).

———— cl. 15.

See CIVIL PROCEDURE CODE, 1882, s. 310A. **15 C. W. N. 863**

CHARTER ACT (24 & 25 VICT., C. 104)—*concld.*

———— cl. 15—*contd.*

See CIVIL PROCEDURE CODE, 1908, s. 109. **15 C. W. N. 879**

See CIVIL PROCEDURE CODE, 1908, s 115. **15 C. W N. 682**

See LAND ACQUISITION **I. L. R. 38 Calc. 230**

CHEATING.

———— abetment of—

See MISJOINDER . **I. L. R. 38 Calc. 453**

CHELLAS.

———— mortgage by—

See MORTGAGE . **15 C. W. N. 838**

CHITTAS.

———— *Chittas* prepared for the purpose of distributing the public revenue on a partition of an estate is a public document and is evidence of the state of affairs then existing and admissible in evidence NOBENDRA KISHORE ROY *v.* DURGA CHARAN CHOWDHURY (1910) **15 C. W. N. 515**

CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876).

———— ss. 3, 12.

See EXECUTION OF RENT DECREE. **I. L. R. 38 Calc. 288**

CHOTA NAGPUR ENCUMBERED ESTATES AMENDMENT ACT (BENG. III OF 1909).

———— s 4.

See EXECUTION OF RENT DECREE. **I. L. R. 38 Calc. 288**

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).

— s. 46—*Sale of raiyati holding—Statute invalidating such sale, subsequently applied to district, if has retrospective operation* There is nothing in s. 46 of the Chota Nagpur Tenancy Act which was extended to Manbhum by Government Notification, dated the 22nd December 1909. to invalidate a sale of a raiyati holding in Manbhum which took place on the 19th August 1909, *i e.*, prior to the extension of the Act to the district. SEBASTIAN *v* KULODA PROSAD DEOGHARIA (1910) . **15 C. W. N. 43**

———— s. 139, cl. (5)—*If bars possessory suit by tenant against landlord—Specific Relief Act (I of 1877), s. 9.* S 139, cl. (5) of the Chota Nagpur Tenancy Act (VI of 1908, B. C.) is no bar to a tenant dispossessed by a landlord instituting a suit under s. 9, Specific Relief Act, for recovery of possession. The word "application" in that clause does not include "suits." KHETTRA NATH GHATTAK *v.* PERU BAURI (1911) **15 C. W. N. 387**

CHOWKIDARI ACT (BENG. VI OF 1870).

——— s. 1—*Chowkidari jagir created since the date of settlement if liable to resumption—Suit to question validity of resumption—Limitation—Limitation Act (XV of 1877), Sch. II, Art 14—Killadari estate in Orissa—Chowkidari Act, if may be extended to such estate—Grant by sanad, if equivalent to settlement—Reg. XII of 1805, s. 33—Reg. I of 1793, s. 8, cl. (4) and Reg VIII of 1793. s. 41, if apply.* The Chowkidari Act (Beng. VI of 1870) was recently applied to the plaintiff's zemindari of Killah Sukinda in Orissa which the plaintiff was entitled to hold at a fixed jama in perpetuity under a *sanad* granted by Government in 1803 which was confirmed by s. 33 of Reg XII of 1805. The tenures resumed as chowkidari chakran were found to have been mostly recent creations, so that they could not have been assigned by Government for the maintenance of village watchmen at the date of the *sanad* or in 1805 : *Held*, that the Chowkidari Act did not apply to such lands and the resumption and transfer thereof under the Act were without jurisdiction That Art. 14 of Sch II of the Limitation Act did not apply to the plaintiff's suit questioning the validity of such resumption and transfer The words " otherwise than under a temporary settlement " in the definition of chowkidari chakran lands s. 1 of the Chowkidari Act refer to a settlement by Government, and the party who in that section is pointed to as assigning the land is also Government, such assignment taking place at the date of the settlement. *Per* WOODROFFE, *J.*— Assuming that the grant of the *sanad* in 1803 was equivalent to a settlement by Government, as such settlement did not assign and did not exclude from assessment the chowkidari chakran land then existing in the plaintiff's zemindari, such lands, if any, would not come under the operation of Beng. Act VI of 1870. HARI CHANDAN MAHAPATRA *v* THE SECRETARY OF STATE FOR INDIA (1910) **15 C. W. N. 300**

CHOWKIDARI CHAKRAN LAND.

See LANDLORD AND TENANT—CHAUKIDARI CHAKRAN LANDS.

See PUTNI . . . **15 C. W. N. 5**

——— **Resumption**—*Chowkidari Chakran land—Mortgage of zemindari before resumption and transfer—Accession to mortgaged property upon transfer—Chakran lands if become new estate.* Whether, upon resumption by Government, *chowkidari chakran* lands are for all purposes severed from the zemindari or not, they form part of the zemindari before resumption, and a mortgage of the zemindari executed before the resumption would cover such lands upon transfer of the resumed *chakran* lands to the zemindar. There is an accession to the mortgaged property within the meaning of s. 70, Transfer of Property Act. *Semble : Chowkidari chakran* lands upon resumption form a separate estate for one purpose only, *viz.*, as being hypothecated for the *chowkidari* assessment. Otherwise it remains a part of the estate. *Kashim Sheikh* v. *Prasanna Kumar, I. L. R. 33 Calc. 596, s c. 10 C. W. N. 598*, disapproved. *Kazi Newaz* v. *Ram Jadu, I. L. R 34 Calc. 109, s.c. 11 C. W. N. 201*, referred to Tenants found holding under a *chowkidar* for 50 years or so before resumption acquired occupancy rights and were not liable to be ejected by the zemindar on resumption and transfer to him of the *chakran* lands *Ram Kumar Bhattacharjee* v. *Ram Newaj, I L R 31 Calc 1021*, followed *Shaikh Jonab Ali* v. *Rakibuddin, 9 C. W. N. 571, Krishna Kinkar Dutt* v. *Mahanto Bhugaban Das, 12 C. W N 161*, distinguished. *Radha Pershad* v. *Budhu Dashad, I. L R. 22 Calc. 938*, referred to RAKHAL DAS MUKHERJEE *v.* MADHAB CHANDRA SINGHA (1910) **15 C. W. N. 61**

CIVIL AND REVENUE COURTS.

——— *Jurisdiction—Suit to set aside decree of Revenue Court—Matters within exclusive jurisdiction of Revenue Court. Held*, that no suit can be entertained by a Civil Court for the purpose of setting aside a decree of a Court of Revenue in a matter as to which the latter Court has exclusive jurisdiction. *Keshab Deo* v. *Bahori, S. A. No 883 of 1905*, decided on the 30th of November, 1906, and *Kishen Sahai* v. *Bakhtawar Singh, I. L. R. 20 All. 237*, referred to. CHIRANJI LAL *v.* KEHRI SINGH (1910) . . . **I. L. R. 33 All. 1**

CIVIL COURTS ACT (XII OF 1887).

——— ss. 18, 19, 21.

See MESNE PROFITS . **15 C. W. N. 506**

——— s 19.

See MORTGAGE . **I. L. R. 33 All. 97**

CIVIL COURTS ACT, BOMBAY (XIV OF 1869).

——— s. 24.

See JURISDICTION **I. L. R. 35 Bom. 264**

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——— s. 2.

See APPEAL . . **15 C. W. N. 862**

——— ss. 2, 244 (c), 294 (16), 540, 588, 617.

See APPEAL . **I. L. R. 38 Calc. 717**

——— ss. 10, 102 and 103—*Suit dismissed for default of appearance—Date fixed, not for hearing of case but for appointment of a guardian to a minor defendant only—Order of dismissal ultra vires.* Consequent on the death of one of the defendants to a suit, the plaintiff applied to bring the heirs of the deceased defendant on to the record, and, as one of them was a minor, nominated as his guardian his elder brother. The brother declined to act as guardian, and the Court fixed a date upon which the plaintiff was to appear and nominate another person as guardian. Upon the date so fixed the plaintiff failed to appear, and the Court dismissed the entire suit, subsequently also rejecting an application for its restoration. *Held*, that the Court had no

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

s. 10—*concld.*

jurisdiction to dismiss the whole suit, as the only matter then before it was the appointment of a guardian to the minor defendant DERI SAHAI *v.* SARASWATI (1911) . . I. L. R. 33 All. 560

——— ss 12, 13.

See ACCOUNT, SUIT FOR.
15 C. W. N. 930

——— s 13—*Res judicata, decision of Probate Court on the existence of a relationship if is—Jurisdiction, nature of, of Probate Court—Probate Court, proceedings before, if suit.* The plaintiffs having applied for letters of administration to the estate of a deceased person on the allegation that they were nephews of the deceased, it was found by the Probate Court on a caveat being entered by the defendant that their relationship was not proved and the application was accordingly refused; in a subsequent suit for the declaration of title and recovery of khas possession of a specific property left by the deceased on the allegation that the plaintiffs as his nephews were entitled to the same: *Held*, that the decision of the Probate Court on the relationship of the plaintiffs with the deceased was not *res judicata* as between the parties to the proceedings in the Probate Court. LALIT MOHAN DAS *v.* RADHARAMAN SAHA (1911)
15 C. W. N. 1021

——— ss. 13, 43—*Res judicata—Dismissal of suit for redemption of a mortgage—Second suit for redemption of another mortgage of the same properties—Civil Procedure Code, 1908, s. 11, O. II, r 2. Held*, that the dismissal of a previous suit for redemption of an alleged oral mortgage was no bar to the institution of another suit for redemption of a written mortgage in respect of the same properties of a different date. *Thrikarkat Madathil Raman* v. *Thruthyil Krishen Nair, I. L R. 29 Mad. 553*, followed. RAM SAHAI *v* AHMADI BEGAM (1910) . . I. L. R. 33 All. 302

——— ss 13, 44 (*b*)—*Suit by a Mahomedan to recover a portion of a house—Prior suits with respect to other portions—Res judicata—Gift—No estoppel by judgment in suit commenced after the gift—Privity in estate—Misjoinder of causes of action* A prior donee of property cannot be estopped as being privy in estate by a judgment obtained in an action against the donor commenced after the gift. A Mahomedan plaintiff having first claimed the property in suit as the heir of his father on the ground that his mother had no title to the property which she purported to dispose of by way of gift to the plaintiff's daughter, cannot in the same suit contend that his daughter had obtained a good title to the property from his mother and he was entitled to the property as the daughter's father. *Mercantile Investment and General Trust Company* v. *River Plate Trust, Loan, and Agency Company*, [*1894*] *1 Ch. 578, 595, The Natal Land, etc., Company* v. *Good L. R. 2 P. C. 132*, and *Naiz-Ullah*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 13—*concld*

Khan v. *Nazir Begam, I L. R 15 All. 108*, followed. ABDUL ALII *v.* MIAKHAN ABDUL HUSEIN (1911)
I. L. R 35 Bom. 297

——— ss. 13, 539—*Res judicata—Suit for declaration of trust and of property comprised in it—Party to such suit not competent subsequently to deny existence of trust Held*, that a person who had been a party to a suit under s. 539 of the Code of Civil Procedure, 1882, in which suit the existence of a waqf and the property comprised therein had been declared, was not competent in a subsequent suit for ejectment of the defendant from a part of the waqf property to plead that the property was not waqf. *Ghazaffar Husain Khan* v. *Yawar Husain, 1. L. R. 28 All. 112*, referred to MANOHARI *v.* MUHAMMAD ISMAIL (1911) . I. L. R. 33 All 752

——— ss. 30, 539—*Civil Procedure Code, 1908, s. 92—Waqf—Alienation of waqf property—Suit to set aside such alienation and for declaration that property is waqf—Right to sue Held*, that a suit by two Muhammadans for a declaration that a certain property is waqf and to set aside the alienation of such property by the persons in charge thereof is not a suit contemplated by s 539 of the Code of Civil Procedure, 1882, or s. 92 of the Code of Civil Procedure, 1908, and is maintainable without permission obtained under s. 30 of that Code. *Muhammad Abdullah Khan* v. *Kallu, I. L. R. 21 All. 187, Jamal-ud-din* v *Mujtaba Husain, I. L. R. 25 All. 631*, and *Kazi Husain* v. *Sagun Balkrishna, I. L. R. 24 Bom. 170*, followed. DASONDHAY *v.* MUHAMMAD ABU NASAR (1911)
I. L R. 33 All. 660

——— ss. 42, 43.

See HUSBAND AND WIFE
I L. R. 38 Calc 629

——— s. 43—*Civil Procedure Code, 1908, Sch I, O. II, r. 2—Competence to give leave to omit remedies or split claims not limited by pecuniary jurisdiction of Court—Suit for surplus collections made by mortgagee—Limitation—Act No. IX of 1871, Sch. II, Art. 105—Act No. XV of 1877, Sch. II, Arts. 105, 109—Act No. IX of 1908, Sch I. Arts 105, 109.* The competence of a Court to give leave to a plaintiff to omit to sue for a relief to which he may be entitled is not affected by the pecuniary value of the relief in respect of which such leave is sought. A suit by a mortgagor after the mortgage has been satisfied to recover surplus collections received by the mortgagee may be brought within three years from the time when the mortgagor re-enters on the mortgaged property under Art. 105 of the second Schedule to the Limitation Act of 1877 (Sch. I to the Limitation Act of 1908) and there is no restriction as to the way in which the mortgagor may obtain possession. *Ram Din* v. *Bhup Singh, I. L. R. 30 All. 225*, discussed. MUHAMMAD FAIYAZ ALI KHAN *v.* KALLU SINGH (1910) . . I. L. R. 33 All. 244

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 108.

See LIMITATION . I. L. R. 33 All. 264

——— s. 170—*Appeal—Contempt of Court—Property of person in contempt sold to realize a fine, but sale afterwards set aside on the submission of the person in contempt.* No appeal lies from an order refusing to confirm a sale held by the Court to realize a fine imposed by it for contempt under s 170 of the Civil Procedure Code, 1882 The Court has power to refuse to confirm such a sale if the fine and costs are paid in by the person guilty of contempt, and the Court considers that the contempt is purged. BADRI PRASAD *v.* TEJ SINGH (1910) . . . I. L. R. 33 All. 68

——— s. 211—*Mesne profits—Assessment—Principle—Trespasser settling land with tenants if liable only to the extent of rent realised—Joint liability of lessor and lessee—Joint tortfeasors.* Mesne profits have to be assessed according to the express provisions of the Statute with reference to what the wrong-doer received, or might with ordinary diligence have realised, and not with reference to what the rightful owner was receiving before wrongful eviction. Where more persons than one are concerned in the commission of a wrong the wronged person has his remedy against all or any one or more of them at his choice. Every wrong-doer is liable for the whole damage and it does not matter whether they acted as between themselves as equals or one of them as agent or lessee of another. *Held*, therefore, that a trespasser is liable jointly with his lessees for the entire amount of mesne profits and not merely to the extent of the rents realised by him from his lessees. BIRESSHUR DUTT CHOWDHURY *v* BARODA PROSAD RAY CHOWDHURY (1906) . 15 C. W. N. 825

——— s. 229A.

See POLITICAL AGENT AT SIKKIM, COURT OF . . I. L. R. 38 Calc. 859

——— ss. 230, 235—*Execution of decree—Limitation—Application for execution whether a fresh application or merely a continuance of a subsisting application* The subsequent application to execute the same decree mentioned in s. 230 of the Code of Civil Procedure, 1882, means a substantive application for execution in the form prescribed by s. 235 of the Code. Hence, where an application for execution in accordance with s 235 of the Code has been made within the period of limitation prescribed by s 230 and has been granted, that is, execution has been ordered in accordance with the prayer of the decree-holder's application, the right of the decree-holder to obtain execution will not necessarily be defeated, if, by reason of objections on the part of the judgment-debtor or action taken by the Court or other cause for which the decree-holder is not responsible, final completion of the proceedings in execution initiated by the application under s. 235 cannot be obtained within the period limited by s. 230. Further applications of the

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 230—*concld.*

decree-holder to the court executing the decree to go on from the point where the execution proceedings had been arrested and complete execution of his decree would be applications merely ancillary to the substantive application under s 235 and would not be obnoxious to the bar of s. 230 *Rahim Ali Khan* v *Phul Chand, I. L. R. 18 All. 482* followed. RAM SARUP *v.* DASRATH TIWARI (1911) I. L. R 33 All. 517

——— ss. 232, 266.

See MAINTENANCE ALLOWANCE I. L. R. 38 Calc. 13

——— s. 238—*Limitation Act (XV of 1877), Arts 142 and 144—Suit to recover possession—Dispossession—Discontinuance of possession—Possession as an agent of minors—Decree by the minors on attaining majority against the agent for possession of the property—Decree not executed and barred by limitation—Agent wrongfully dispossessed by a third person—Money decree against the original owners—Decree-holder seeking to attach property—Adverse possession.* *N* died in 1879 leaving behind him two minor sons *R* and *D*, and a mistress *A* The latter looked after the minors and managed their property. When they arrived at the age of majority they found that *A* claimed the property in her own right. In 1891, *R* and *D* sued *A* for the possession of the lands and obtained a decree on the 30th of August 1892, which was confirmed on appeal on the 15th of June 1894 This decree was sought to be executed on the 26th June 1897, but the application was dismissed as barred by limitation *A* was then wrongfully deprived of the possession of the property by *V*, who sold it to *B* in 1908. *B* mortgaged the property to *E* in 1900. In the same year, the plaintiff obtained a money decree against *R* and *D*, and in execution of it he had an attachment placed on the property, but the attachment was removed in 1904 at the instance of *B* and *E*. In 1905, the plaintiff brought a suit for a declaration that the property was liable to be attached and sold in execution of his decree against *R* and *D*. The defendants *B* and *E* contended that the suit was barred under Art 142 of the Limitation Act, 1877, inasmuch as neither the plaintiff nor his predecessors-in-title *R* and *D* were in possession of the property within twelve years preceding the suit. *Held*, that the suit having been brought by the plaintiff under s. 283 of the Civil Procedure Code of 1882, to establish his right to attach and sell the property in dispute as that of his judgment-debtors *R* and *D* in execution of his money decree, all that he had to prove was that on the date of attachment the judgment-debtors had a subsisting right to the property ; and that the suit must, therefore, be tried as if it were a suit for possession by the judgment-debtors. *Held*, also, that as *A*'s possession must be deemed to have begun in 1879 as that of bailiff or agent for the minors *R* and *D* and to have continued as such until after they had arrived at the age of majority, and as there had never been

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— s. 238—*concld.*

any dispossession by *A* of *B* and *D* while they had been in possession, in a suit against *A* her plea of limitation would be decided by the application, not of Art. 142, but of Art. 144 of the Limitation Act, 1877. *Morgan* v. *Morgan, 1 Atk. 489,* followed; *Taylor* v. *Horde, Sm. L. C. Vol. II, 10th Edn., pp 644, 645,* followed; *Lallubhai Bapubhai* v. *Mankuvarbai, I. L. R. 2 Bom 388, at p. 413,* followed; and *Dadoba* v *Krishna, I. L. R. 7 Bom. 34,* followed. *Held,* further, that though the decree for possession obtained by *B* and *D* against *A* had become incapable of execution by reason of their failure to apply to the Court for its execution within the period prescribed by the law of limitation, the right established by it remained; and though that right could not be enforced as against *A* by execution through the Court, the decree-holders could enter by ousting any trespasser, *A* included *Bandhu* v. *Naba, I. L. R. 15 Bom 238,* followed. *Held,* therefore, that there having been no allegation of possession in *B* and *D* lost by dispossession or discontinuance of possession, but the case put forward having been a title in them established by their decree against *A* and a wrongful possession obtained from her after the decree by *V* under whom *B* and *E* claimed, the limitation applicable to the suit was that provided by Art. 144, not Art. 142 of the Indian Limitation Act (XV of 1877). *Fakir Abdulla* v. *Babaji Gungaji, I. L. R. 14 Bom 458,* followed; and *Gangadayal Nagu Kaval Mhatra* v *Nago Dhaya Mhatra, (1887), P J. 242,* followed. *Per* HEATON, *J.*—Art. 142 of the Indian Limitation Act (XV of 1877) has no application to claims which neither in terms nor in substance are claims to possession, made necessary by reason of dispossession or discontinuance of possession. It is a general principle that any one suing in ejectment must prove possession within twelve years: the reason for this, however, is that possession is commonly the effective assertion of title which is relied on: but it is not the only one. There is another which in some cases is equally good, and that is an assertion of title made in Court and established by a decree. That is good against those who are party defendants to the suit; and if the same title is re-asserted and made good in a later suit against other opposing parties, it is good against them also and entitles to possession whether the title claimant has or has not been in possession within twelve years, unless the opponent can defeat the title by adverse possession. VASUDEO ATMARAM JOSHI *v* EKNATH BALKRISHNA THITE (1910) . . . . **I. L. R. 35 Bom 79**

1. ——— s. 244—*Sale in execution of a money-decree—Suit by previous purchaser at private sale if barred.* A money-decree was obtained against the heirs of one *N*. Some of the heirs subsequently transferred their interest in the disputed property to *K* and it was found that the transfer was *bonâ fide* and for value. The decree-holder then attached the property and purchased it himself in execution

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 244—*concld.*

of the decree. In a suit by the heirs of *K* for declaration of title and recovery of possession on the ground that the property attached having been sold to *K* could not be attached in execution of the decree:—*Held,* that the suit was not barred by s. 244 of the Civil Procedure Code, 1882, the purchaser not being a representative of the judgment-debtor within the meaning of that section *Gour Sunder Lahiri* v. *Hem Chandra Chowdhury, I. L. R. 16 Calc. 355, Ishan Chandra Sirkar* v *Beni Madhab Sirkar, I L R 24 Calc. 62; Akhoy Kumar Soor* v. *Bejoy Chand, I. L R. 29 Calc 813,* distinguished. KALI KUMAR VIDYARATNA *v* MISRIJAN (1911) . . . . **15 C. W. N. 711**

2. ——— *Civil Procedure Code (Act XIV of 1882), ss 287. cl. (c), 244—Appeal—Under-statement of value in sale proclamation—Application to amend proclamation must be considered before sale.* Proceedings under s. 287, cl. (c) of the Civil Procedure Code of 1882, fall under the provisions of s. 244 of the Code, and are appealable as such Where the lower Court dismissed as premature an application made before the sale for amendment of sale proclamation on the ground that the property had been under valued.—*Held,* that under-statement of value in a sale proclamation being a material irregularity, where an application is made by a debtor objecting to the value of the property as stated in the sale proclamation it is the duty of the Court to make an enquiry and to satisfy itself that the value as stated in the sale proclamation is correct As the sale had already taken place and the appeal thus made infructuous the Court dismissed the appeal with these observations LACHMAN PERSHAD SINGH *v.* GANGA PERSHAD SINGH (1910) . . . . **15 C. W. N. 713**

3. ——— *Suit by party or representative against auction-purchaser to raise question within section not maintainable Auction-purchaser as such not representative of decree-holder or of the judgment-debtor* A suit by a party to a suit as his representative against an auction-purchaser raising questions which, as between the parties, must be decided in execution under s. 244 of the Code, is not sustainable. The prohibition is not based on the ground that the auction-purchaser is the representative of the decree-holder. The auction-purchaser is not such representative. *Manickka Odayan* v. *Rajagopala Pillai, I. L. R. 30 Mad. 507,* not approved. *Per* WALLIS, *J.*—The prohibition is based on the general intention of the Legislature as gathered from the section. *Per* KRISHNASWAMI AIYAR, *J*—A party to the execution proceedings can impeach a sale only by an application to set it aside; and where the sale not being so impeached, is confirmed the possession of the auction-purchaser cannot be disturbed by suit. The true ground for the prohibition is not that s 244 bars the suit as the auction-purchaser is the representative of the decree-holder, but that s. 244 being a bar to setting aside the sale except by a proceeding between the parties, the suit

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 244**—*concld.*

against the purchaser is not maintainable until it is to set aside A stranger purchaser at an auction sale in execution of a money decree is not the representative of the decree-holder or of the judgment-debtor. NADAMUNI NARAYANA IYENGAR *v* VEERABHADRA PILLAI (1910) . **I. L. R. 34 Mad. 417**

——— **s. 248**—*Execution—Res judicata—Notice under s 248, Civil Procedure Code (Act XIV of 1882), issued by Court on application for transfer of decree—Limitation, bar of, not raised* In sending a decree for execution to another Court, the Court which passed the decree is not called upon to consider whether the decree is still capable of execution. That is a question for determination by the Court to which the decree is transferred upon a proper application for execution presented to it. Notice under s 248, Civil Procedure Code, is to be issued by the Court which has seizin of the application for execution, and not upon an application for transfer of a decree A judgment-debtor is therefore not only not bound to appear and urge an objection of limitation upon a notice under s. 248, Civil Procedure Code, issued by the Court upon an application for transfer of the decree, but it is not possible for him to take this step. SRIPATI CHARAN CHOUDRY *v.* R. BELCHAMBERS (1910) . . **15 C. W. N. 661**

——— **ss. 256, 488, 490.**

See ATTACHMENT **I. L. R. 38 Calc. 448**

——— **s. 257A.**

See STATUTE, CONSTRUCTION OF.
I. L. R. 35 Bom. 307

——— **s. 266.**

See AGRA TENANCY ACT (II OF 1901), S. 20 (*2*) . . **I. L. R. 33 All 136**

——— **ss. 268, 274**—*Usufructuary mortgage—Debt—Immoveable property—Execution of money-decree—Attachment.* Where a deed of mortgage with possession provided that the mortgagee was to enjoy the profits in lieu of interest for ten years and was to be redeemed on the expiration of the term by payment of the mortgage money, *held*, that the document created a purely usufructuary mortgage. *Held*, further, that in the case of a usufructuary mortgage, there was no debt payable by the mortgagor to the mortgagee which could be attached in execution of a money-decree against the assignee of the mortgagee, and that s 268 of the Civil Procedure Code (Act XIV of 1882) was not applicable to such a case. The procedure should be by attachment, under s. 274 of the Civil Procedure Code, of the interest in immoveable property and its sale according to the provisions of the Code. *Tarvadi Bholanath* v. *Bai Kashi, I. L. R. 26 Bom. 305*, explained. MANILAL RANCHOD *v.* MOTIBHAI HEMABHAI (1911) . **I L. R. 35 Bom. 288**

——— **s. 273**—*Civil Rules of Practice, Rule 184—Mortgagee of mortgage decree entitled to sell mortgaged property by executing the mortgage decree—Effect of s. 273 on sale of mortgage decree—Pledge of mortgage decree, validity of. A* mortgaged certain properties to *B* who sued on his mortgage and obtained the usual decree directing payment and sale in default. *B* mortgaged the decree to *C* who sued *B* in the Court which passed the decree mortgaged and obtained a decree directing the sale of the decree obtained by *B* against *A*. *C* became the purchaser of the decree at the auction and applied for execution of the decree as the transferee thereof: *Held*, that *C*'s application was sustainable and neither s 273 of the Civil Procedure Code nor Rule 184 of the Civil Rules of Practice debarred him from doing so. *Per* CHIEF JUSTICE —The interest mortgaged to *C* included the right which *B* had to sell in default of payment. No order for sale of the decree obtained by *B* was necessary to enable *C* to execute his decree and neither s 273 nor Rule 184 applied. *Per* ABDUR RAHIM, *J.*—For the purpose of s 273 of the Civil Procedure Code, a decree on a mortgage is a money decree and the section by implication prohibits the sale of such decree when attached. Such prohibition is not however based upon any grounds of public policy so as to render the sale an absolute nullity. S 273 merely lays down a rule of procedure and it cannot be so construed as to interfere further than is necessarily called for by its language with the substantive rights conferred upon the creditor by s. 266 of the Code or with the right of alienation recognised by s 232 of the Code. S 273 has no application where attachment of the decree is not asked for. S. 232 of the Code recognises the validity of pledges of decrees and it must be within the competence of a Court, in the exercise of its general power of enforcing contract to order the sale of the decree pledged. SUBBARAYA ROWTHU *v* KUPPUSAWMI AIYANGAR (1909) . . **I. L. R. 34 Mad. 442**

——— **ss. 276, 295, 320, 325A**—*Execution of decree—Attachment of property—Transfer of execution proceedings to Collector—Property re-attached under another decree between same parties—Second execution proceedings transferred to Collector—Claim under the first decree satisfied by compromise—Collector asked to return the darkhast as disposed—Judgment-debtor alienating the property—Claim for rateable distribution under another decree—Claims enforceable under the attachment—Bills of sale Act, 1878, s. 8—Practice and procedure.* In execution of a money decree which the plaintiff obtained against *B*, certain property was attached and ordered to be sold. The execution proceedings were thereafter transferred to the Collector under s. 320 of the Civil Procedure Code of 1882 In the meanwhile, the plaintiff obtained another money decree against *B*, in execution of which the property was again attached. These execution proceedings were also transferred to the Collector. While the Collector was taking steps for the execution of the first decree, the plaintiff informed the Mamlatdar, who was carrying on the execution work on behalf

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 273**—*concld.*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 276—*contd.*

of the Collector, that his claim under the first decree was satisfied by *B*, and that the *darkhast* should be returned to the Court as disposed of. The Collector did so. Ten days after this, *B* sold the property to the defendant, who out of the consideration moneys satisfied the plaintiff's first decree and other debts of *B*. The plaintiff obtained a third money decree against *B*, in execution of which the property was sold through the Civil Court and purchased by the plaintiff himself at the Court sale He then sued to recover possession of the property from the defendant. In support of the plaintiff's claim, it was contended: (i) that the deed of sale relied on by the defendant was invalid, having regard to the provisions of s. 325A of the Civil Procedure Code (Act XIV of 1882); (ii) that the Collector was not warranted in acting upon the plaintiff's admission that the decree had been satisfied, because the satisfaction was one made out of Court, and not having been certified to the Court, it could not be recognized as a payment of the decree under s. 258 of the Code; and (iii) that the sale to the defendant was illegal and void under s. 276, because the property was on the date of the sale under attachment in the plaintiff's *darkhast* ultimately disposed of by the Collector, on the strength of the plaintiff's application that it should be returned to the Court as 'disposed of' in consequence of the decree *Held*, (i) that the sale to defendant was not void under the provision of s. 325A, inasmuch as ss. 322 to 325 presupposed a decree which had to be satisfied and which was therefore capable of execution. That could not be said of a decree which its holder by his declaration to the Collector acknowledged to have been satisfied. (ii) That the intimation to the Collector who was in charge of the execution, amounted to a due certifying of the adjustment of the decree, which satisfied the conditions of s. 258. *Muhammad Said Khan* v. *Payag Sahu, I L. R 16 All 228*, followed (iii) That s. 276 did not apply; for though the attachment had existed at the date of the sale to the defendant and was never formally raised, the *darkhast* claim having been satisfied was no longer enforceable under it. *Held*, further, that the second attachment itself was illegal under the provisions of the last portion of the first paragraph of s. 325A; and it could not affect the private sale to the defendant by *B*. *Held*, also, that the sale to the defendant was not illegal and void under s 276 of the Code by reason of the second *darkhast*. The moment the attachment of the plaintiff came to an end by reason of the satisfaction of his first decree sent to the Collector for execution, all claims enforceable under the attachment ceased to be enforceable under it. A claim under another decree cognizable under s. 295 ceased to be operative for the purposes of ss. 276 and 295, the same being dependent upon the continuance of the said attachment. *Sorabji E. Warden* v. *Govind Ramji, I. L. R. 16 Bom. 91*, distinguished. *Umesh Chander Roy* v. *Raj Bullubh Sen, I. L. R. 8 Calc. 279, Gobind Singh* v. *Zalim Singh, I. L. R. 6 All. 33*, and *Kunhi Moossa* v. *Makki, I. L. R. 23 Mad. 478*, followed. When a decree-holder intimates to the Collector that his decree has been satisfied and that the necessity for its execution by the Collector has ceased to exist, the Collector's powers under ss. 322 to 325 also cease, because the very foundation of them, consisting in the fact of a decree which is alive and capable of execution, has disappeared The provisions of s. 276 of the Civil Procedure Code (Act XIV of 1882) make the private alienation void, not absolutely but only "as against all claims enforceable under the attachment" referred to in it. Where the execution proceedings, in the course and for the purpose of which the attachment was made, have come to an end on account of satisfaction of the decree by the judgment-debtor, and in consequence the decree is no longer alive, the attachment also ceases and there is no longer any claim "enforceable" under the attachment to make the private alienation effected by the judgment-debtor under the attachment void. The person for whose protection s. 276 was primarily intended has had his claim in that event satisfied otherwise than by the attachment. As to any claim under another decree, cognizable under s. 295, that had been dependent on the continuance of the said attachment, when that attachment was swept away, all other claims cognizable under it ceased to be operative for the purposes of ss. 276 and 295. The only bar in the way of the private alienation was removed as if it never existed in law; and the question as to the private alienation made by the judgment-debtor to the defendant during the attachment became reduced to one between that judgment-debtor and his alienee. KHUSHALCHAND *v.* NANDRAM SAHEBRAM (1911) . . **I. L. R. 35 Bom. 516**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 276—*concld.*

——— ss. 282, 287—*Decree—Execution—Attachment—Application to raise attachment by a third person—Court declaring lien in his favour—Property sold subject to lien—Third party suing the auction-purchaser for amount of lien—Auction-purchaser can question the existence of lien.* In execution of a money decree obtained by *G* against *H* certain property belonging to the latter was attached. *U* intervened in those proceedings and asked to raise the attachment on the ground that the property was his. The Court investigated the claim under ss 280 and 281 of the Civil Procedure Code of 1882 and held that the property belonged to *H* and that *U* was entitled to a lien on the property for R687-11-3. The property was then sold at a Court sale subject to the lien and purchased by *N*. *U* sued *N* to recover the amount of his lien. *N* contended that the order passed in the miscellaneous proceedings did not bind him and that he was entitled to question the existence of the lien:—*Held*, that *N* was not bound by the order passed in the miscellaneous proceedings, for he could not be regarded as a party to it being not a representative either of the judgment-debtor or of the judg-

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 282**—*concld.*

ment-creditor. *Vasanji Haribhai* v *Lallu Akhu*' *I L. R 9 Bom. 285, Vishvanath Chardu Nark* v' *Subraya Shivapa Shetti, I. L. R. 15 Bom 290,* followed. *Held,* further, that *N* was entitled to question the existence of the lien, inasmuch as the order passed by the Court as to the lien could not be regarded as one passed under s 282, but as one passed under s. 287 of the Civil Procedure Code of 1882. NARAYAN SADOBA *v* UMBAR ADAM MEMON (1911) . . **I. L. R. 35 Bom. 275**

——— **s. 306**—*Civil Procedure Code (Act XIV of 1882), ss 306, 244, 311—Execution sale—Sale confirmed though balance of purchase-money not deposited—Sale, void or voidable.* Where a purchaser at an execution-sale failed to deposit the balance of the purchase-money as required by s 306 of Act XIV of 1882, and yet the sale was confirmed —*Held,* that the balance of the purchase money not having been paid at all the sale was a nullity and not merely an irregular sale for which remedy might be had by application under s 244 or 311 of this Code *Ahmad Bakhsh* v *Lalta Prasad, I. L. R 28 All 238; Bhim Singh* v. *Sarwan Singh, I. L. R. 16 Calc. 33,* distinguished. ALI MEAH *v.* KIBRIA KHATUN (1911) **15 C. W. N. 350**

——— ——— **s. 310A.**

See CONTRIBUTION . **I L. R. 38 Calc. 1**

——— **ss. 310A, 312, 588.**

See APPEAL . **I. L. R. 38 Calc. 339**

——— **s 310A.**

See JURISDICTION OF HIGH COURT. **I. L. R. 38 Calc. 832**

See LIMITATION ACT, 1877, s. 3, SCH. II, ARTS. 13 AND 14 . **I. L. R. 33 All. 93**

——— **s. 311**—*Understatement of value in sale-proclamation, if material irregularity.* Deliberate understatement of value of property in a sale-proclamation is a material irregularity within the meaning of s 311, Civil Procedure Code, and a sale may be set aside on that ground *Sadatmand Khan* v *Phul Kuar, I. L. R. 20 All 412 s c 2 C W N 550,* followed SIVADURGA DEBI *v.* RAJMOHAN PODDAR (1910) . **15 C. W. N. 577**

——— **s. 316.**

See PRE-EMPTION . **I. L. R. 33 All. 45**

——— *Execution of decree—Purchase at auction sale—Date of accrual, of auction-purchasers title. Held,* that under the Code of Civil Procedure, 1882, the title of a purchaser of immoveable property at a sale in execution of a decree to mesne profits arising therefrom does not accrue until the date of the confirmation of such sale. *Amir Kazim* v. *Darbari Mal, I. L. R. 24 All. 475* and *Prem Chand Paul* v *Purnima Dasi, I L. R. 15 Calc. 546,* followed. SHIAM LAL *v.* NATHE MAL (1910) **I. L. R. 33 All. 63**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

1. ——— **s. 317**—*Civil Procedure Code (Act V of 1908), s. 66—Court-sale in execution—Certified purchaser—Benami—Mortgagee of certified purchaser—Protection—Doctrine of constructive notice—Transfer of Property Act (IV of 1882), ss. 3 and 41.* The mortgagee of the certified purchaser at a Court-sale is entitled to rely upon the title of his mortgagor including such immunity from suit as the law provides in support of the statutory title. S. 66 of the Civil Procedure Code (Act V of 1908) which may be called in aid for the purpose of assisting in the construction of s 317 of the Civil Procedure Code (Act XIV of 1882)—supports this conclusion *Hari Govind* v. *Ramchandra, I. L. R. 31 Bom. 61,* followed. The doctrine of constructive notice applies in two cases, first, where the party charged had actual notice that the property in dispute was charged, incumbered or in some way affected, in which case he is deemed to have notice of the facts and instruments to a knowledge of which he would have been led by an inquiry after the charge or incumbrance of which he actually knew, and, secondly, where the Court has been satisfied from the evidence before it that the party charged had designedly abstained from inquiring for the very purpose of avoiding notice. This does not conflict in any way with the statutory definition of notice in s 3 of the Transfer of Property Act (IV of 1882) A purchaser of property is under no legal obligation to investigate his vendor's title But in dealing with real property as in other matters of business regard is had to the usual course of business; and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor's title is not allowed to derive any advantage from his wilful ignorance of defects which would have come to his knowledge if he had transacted his business in the ordinary way. This is what is meant by "reasonable care" in s. 41 of the Transfer of Property Act (IV of 1882). Occupation of property which has not come to the knowledge of the party charged is not constructive notice of any interest in the property. MANJI KARIMBHAI *v* HOORBAI (1910) **I. L R. 31 Bom. 342**

2. ——— *Prior and subsequent mortgagees—Purchase of part of mortgaged property in execution of decree on prior mortgage—Suit on second mortgage—Auction-purchaser alleged to be benamidar of mortgagor—Transfer of Property Act (IV of 1882), s 43.* A portion of certain mortgaged property was purchased by a third party at auction sale in execution of a decree on a prior mortgage. *Held,* on suit for sale by the subsequent mortgagee, that it was not open to the subsequent mortgagee to bring this portion again to sale upon the ground that the auction-purchaser was merely a *benamidar* for the mortgagor. *Ram Narain* v. *Mohanran, I. L. R 26 All 82,* followed. SARJU PRASAD *v.* BINDESHRI BAKHSH PAL SINGH (1911) **I. L. R. 33 All. 382**

——— **s. 325A**—"*Alienation*"—*Mahomedan Law—Gift during marz-ul-maut—Will. Held,*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s 325A—*concld.*

that a gift made by a Mahomedan during death-illness is (1) under the Mahomedan Law a will and therefore valid as to one-third of the property comprised in it, and (2) is not an alienation which might fall under the prohibition contained in s. 325A of the Code of Civil Procedure, 1882 MUHAMMAD SAYEED *v.* MUHAMMAD ISMAIL (1910) I. L. R. 32 All 233

——— ss. 341, 349—*Execution of decree—Arrest of debtor—Discharge pending an insolvency petition—Re-arrest in execution of the same decree—Indian Limitation Act (XV of 1877), Sch. II, Art. 179.* Where a judgment-debtor who has been arrested and sent to jail in execution of a decree obtains an *interim* release under s. 349 of the Code of Civil Procedure, 1882, such a release is not a discharge under s. 341 of the Code and does not exempt the judgment-debtor from liability to be re-arrested in execution of the same decree. An application, therefore, for execution in such circumstances of the decree by re-arrest of the judgment-debtor is one in accordance with law and saves limitation. *Shamji Deokaran* v. *Poonja Jairam, I. L. R. 26 Bom. 652*, followed. *Secretary of State for India* v. *Judah, I. L. R. 12 Calc. 652*, dissented from. SURAJ DIN *v.* MAHABIR PRASAD (1910) . . . . I. L. R. 33 All. 279

——— ss. 344, 360A (Ch XX).

See PROVINCIAL INSOLVENCY ACT, s. 14, CL (3) . . . 15 C. W. N. 213

——— ss. 361, 582—*Abatement of appeal on death of defendant-respondent—Actio personalis moritur cum persona—Application of rule to appeal by plaintiff—Costs.* In a personal action for an injunction a decree was given for the defendant with costs. Plaintiffs appealed. During the pendency of the appeal, the defendant-respondent died: *Held*, that the right to prosecute the appeal against the respondent's legal representative does not survive to the appellants. The rule *actio personalis moritur cum persona* is not interfered with merely because the person injured incurred in his life-time some expenditure of money in consequence of the personal injury. *Pulling* v. *Great Eastern Railway Company, 9 Q. B D. 110*, approved. *Kishna Behary Sen* v. *The Corporation of Calcutta, I. L. R. 31 Calc. 406*, approved. This rule applies as against the estate of a deceased respondent. *Paraman Chetty* v. *Sundararaja Naick, I. L. R. 26 Mad. 499*, distinguished If an action fails what is incidental fails also and if an appeal abates as regards an injunction sought for it abates as regards the costs incurred by the appellant as a consequence of the dismissal of his suit. An appellant cannot be allowed to show that the decree refusing the injunction was wrong for the mere purpose of getting rid of the direction as to costs. JOSIAM TIRUVENGADACHARIAR *v.* SWAMI IYENGAR (1910) . . . I. L. R. 34 Mad. 76

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— ss. 376, 506, 508, 510.

See ARBITRATION . I. L. R. 33 All. 743

1. ——— s 424—*Suit against Government—Notice—Bhagdari and Narvadari Act (Bom Act V of 1862), s. 3—Mortgage of a narva—Collector declaring the mortgage invalid—Suit against Collector without notice.* The plaintiff filed a suit against the Collector of Kaira to obtain a declaration that an order passed by that officer under s 3 of the Bhagdari and Narvadari Act (Bombay Act V of 1862), declaring some mortgages in plaintiff's favour null and void, was inoperative. No notice was given to the defendant as provided for by s. 424 of the Civil Procedure Code of 1882:—*Held*, that the notice required by s. 424 of the Civil Procedure Code of 1882 was necessary to be given; for the declaration was a distinct act of the Collector, done in the exercise of a statutory power and therefore in his official capacity. *Per Curiam*—"The true test of an action for the purposes of s. 424 is whether the wrong complained of as having been done by the public officer sued amounts, first, to a distinct act on his part, and secondly, whether that act purported to have been done by him in his official capacity. Both these elements must combine to render necessary the giving of notice under s. 424 as a condition precedent to suit" CHHAGANLAL KISHOREDAS *v.* THE COLLECTOR OF KAIRA (1910) . I. L. R. 35 Bom. 42

2. ——— *Suit for injunction—Suit against Secretary of State for India—Notice—Inam—Resumption.* The plaintiff, an Inamdar of a village was called upon by the Collector to hand over the management of the village to Government officials, on the ground that in the events that had happened the *inam* had become resumable by Government. The plaintiff, thereupon, without giving the notice required by s. 424 of the Civil Procedure Code (Act XIV of 1882), filed a suit against the Secretary of State for India in Council for a declaration that he was entitled to hold the village in *inam*, and for a permanent injunction restraining the defendant from resuming the village. *Held*, that the suit was bad in s 424 of the Civil Procedure Code (Act XIV of 1882). The term "act" used in s. 424 of the Civil Procedure Code in 1882 relates only to the public officers, not to the Secretary of State The expression "no suit shall be instituted against the Secretary of State in Council" is wide enough to include suits for every kind, whether for injunction or otherwise. *Per* HEATON, *J.*—Where there is a serious injury so imminent that it can only be prevented by an immediate injunction, a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice, if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice. *Flower* v. *Local Board of Low Leyton, 5 Ch. D. 347*, followed. SECRETARY OF STATE *v.* GAJANAN KRISHNARAO (1911) I. L. R. 35 Bom. 362

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

1. ——— s. 462—*Minor—Compromise—Sanction of Court not obtained—Compromise not binding on minor.* When a suit, to which a minor is a party, is compromised and no leave of the Court is obtained under s. 462 of the Civil Procedure Code (Act XIV of 1882) the compromise does not bind the minor and is voidable The fact that it is for the benefit of the minor, or that he has derived benefit from it, makes no difference. BHIWA *v.* DEVCHAND (1911) . **I. L. R. 35 Bom. 322**

2. ——— *When leave of Court not obtained, compromise not binding on minor—Hardship to other party on ground for upholding compromise—Minor not bound to return any benefit under compromise before it is set aside—Joint contract, liability on.* A compromise entered into on behalf of a minor without obtaining leave of the Court under s. 462 of the Code of 1882, is unenforceable against the minor. It cannot be treated as binding upon him on the ground that its being set aside would work hardship on the other party. It is also no ground for not setting it aside that it is impossible to place the parties in the position in which they were when the compromise was effected. The withdrawal from the suit by the other party cannot be considered as service rendered to the minor, for which the minor ought to pay compensation before the compromise is set aside. *Aman Singh* v *Narain Singh, I. L. R 20 All. 98,* not followed The fact that a joint contract is not enforceable against one of the parties does not absolve the other party from liability. SETHURAM SAHIB *v.* VASANTA RAO ANANDA RAO DHYBAR (1910) . . . **I. L. R. 34 Mad. 314**

——— s. 492.

See CIVIL PROCEDURE CODE, 1908, O. XXXIX, R. 1 . **I. L. R. 33 All. 79**

——— s. 521 (*c*).

See ARBITRATION **I. L. R. 38 Calc. 522**

——— s. 525.

See APPEAL . **I. L. R. 38 Calc. 143**

——— s. 539—*Suit relating to public religious property—Ejectment of trespasser—Party of suit—Joinder of parties—Practice and procedure.* Where a breach of trust is complained of and where the alienee of trust property denies that the property is the subject of a public trust for religious purposes, he is a proper and necessary party to a suit brought under the provisions of s. 539 of the Civil Procedure Code of 1882, though no relief can be given as against him by way of a decree in ejectment. COLLECTOR OF POONA *v.* BAI CHANCHALBAI (1911) **I. L. R 35 Bom. 470**

——— s. 591—*Appeal ostensibly in suit but solely with reference to interlocutory application dismissed—No necessity to appeal separately from every interlocutory order.* An interlocutory application by a plaintiff in a suit to amend his plaint was refused and his suit decreed for part only of his

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— s. 591—*concld.*

claim. His appeal in that suit was directed solely against the refusal to amend. *Held,* that the appeal was directed against the decree in the suit within the meaning of s 591 of the Code of Civil Procedure, Act XIV of 1882, though the only reason for the appeal was the erroneous decision in regard to the interlocutory order. *Sher Singh* v *Diwan Singh, I L. R. 22 All. 366,* not followed *Sheo Nath Singh* v. *Ram Din Singh, I. L R. 18 All 19, 22,* not followed. *Maharaja Moheswur Singh* v *The Bengal Government, 7 Moo. I. A. 283, 302,* relied on DHAMARA KUMARA THIMMA NAYANIM *v.* BUKKAPATNAM VENKATACHARLU (1910) **I. L. R. 34 Mad. 228**

——— s. 608.

See PRIVY COUNCIL, PRACTICE OF. **I. L. R. 38 Calc. 335**

——— s. 622.

See ARBITRATION BY COURT. **I. L. R. 38 Calc. 421**

CIVIL PROCEDURE CODE (ACT V OF 1908).

——— s. 2 (*11*).

See HINDU LAW—REVERSIONER. **I. L. R. 33 All. 15**

——— ss. 2, 49, 104 (*2*), O. XXI, rr. 89, 92: O. XLIII, r. 1 (*j*)—

See APPEAL . **I. L. R. 38 Calc. 339**

1 ——— s. 11—*Res judicata—Same issue decided in two connected suits—Appeal in one only.* The same issue was decided between the same parties in each of two connected suits. The party against whom the decision was appealed in the one case, but not in the other, the decree in which became final before his appeal was heard *Held,* that the hearing of the appeal was barred. *Zaharia* v. *Debia, I L R 33 All. 51,* followed. DAKHNI DIN *v.* SYED ALI ASGHAR (1910) . **I. L. R. 33 All. 151**

2. ——— *Res judicata—Decision of first suit on merits but its dismissal for not paying the deficient Court-fees—Second suit for trial on same merits.* A previous suit between the parties failed on the ground that the claim was undervalued and the plaintiff when called upon to pay the deficient Court-fees omitted to do so. There were issues on merits also decided In a subsequent suit for trial on the same merits the decision in the first suit was pleaded as *res judicata. Held,* that the rejection of the suit on the ground of undervaluation at any stage of it did not make it *res judicata,* for the purposes of a subsequent suit on the same cause of action or litigating the same title. *Held,* further, that the dismissal of the suit on the ground of undervaluation having been sufficient by itself, the findings on the issues on the merits were not necessary for the decision of the suit and could not

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— s. 11—*contd.*

have the force of *res judicata*. IRAWA KOM LAXMANA MUGALI *v.* SATYAPPA BIN SHIDAPPA MUGALI (1910) . . . I. L. R. 35 Bom. 38

3. ——— *Res judicata—Two suits—One judgment, but two decrees—Appeal against one decree before the decision of which the other decree becomes final* *M* and *Z* each filed a suit for pre-emption in respect of the same sale, each claiming a right of pre-emption preferential to that of the other. Each plaintiff was made a party defendant to the suit brought by the other. A judgment was delivered in the suit of *M* and a copy thereof was placed on the record as the judgment in the suit of *Z*, but a separate decree was framed in each suit The suit of *M* was decreed: that of *Z* dismissed *Z* appealed from the decree in his own suit but not from the decree in the suit brought by *M*, which become final before *Z*'s appeal was decided *Held*, that the doctrine of *res judicata* applied, and *Z*'s appeal was barred *Chayyu* v. *Sheo Sahai, I. L R. 10 All 123, Bal Kishan* v. *Kishan Lal, I. L R 11 All 148, Ram Lal* v *Chhab Nath, I. L. R. 12 All. 578; Mangli* v *Narain, All. Weekly Notes (1893) 190; Kesho Tiwari* v. *Saryu Kunwar, All Weekly Notes (1893), 221; Abdul Basit* v *Asfaq Husain, All Weekly Notes (1908), 211*, and other (unreported) cases of the Allahabad High Court approved and followed. *Damodar Das* v. *Sheo Ram Das, I. L R. 29 All. 730*, overruled *Abdul Majid* v. *Jew Narain Mahto, I. L. R. 16 Calc 233, Mariamnissa Bibi* v. *Joynab Bibi, I. L R 33 Calc. 1101*, and *Panchanada Velan* v. *Vaithinatha Sastrial, I. L R 29 Mad 333*, dissented from *Gurunayammah* v. *Venkatakrishnama Chetti, I. L R 24 Mad. 350*, referred to ZAHARIA *v.* DEBIA (1910) . . . I. L. R. 33 All. 51

4. ——— s. 11, Expl. IV—*Res judicata—Redemption suit—Second suit in ejectment—Court—Discretion—In ejectment suit a decree for redemption can be passed—Practice and procedure* Where a person brings a redemption suit and fails, his second suit in ejectment against the same defendant is not barred by *res judicata*. The question whether any matter might and ought to have been made a ground of defence or attack in a previous suit must depend on the facts of each case. One important test is, whether the matters in the two suits are so dissimilar that their union might lead to confusion. The matter involved in a suit in ejectment is essentially different from that involved in a suit for redemption. In the first place where a person sues to eject he sues as owner of the property; where he sues to redeem, he sues as owner of an interest in it, namely, the equity of redemption, and the defendant as mortgagee is sued as holding the property as security for the debt. Secondly, in a suit for redemption, no question of title to the property is necessarily involved, because if the mortgage set up by the plaintiff is proved and alive, the mortgagee cannot deny the mortgagor's title but must allow him to redeem and sue him separately on the question of title. If the mortgage is not proved, the suit fails independently of the question of title It is the practice of the Bombay High Court to pass a decree for redemption in a case in which the plaintiff has sued in ejectment That is purely in the exercise of the Court's discretionary power; and it can hardly be maintained that the plaintiff failing in an ejectment suit ought to pray for the alternative relief by way of redemption, when the Court is not bound to grant it as a matter of right. MAHOMED IBRAHIM *v* SHEIKH HAMJA (1911) . . . I. L. R. 35 Bom 507

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 11—*concld.*

5. ——— s. 11, Expl. VI—*Res judicata—"Right claimed in common"—Jus tertii.* In a suit for ejectment in a Revenue Court the defendants denied the title of the plaintiff and set up their own title as to part of the property and a *jus tertii* as to the rest. The Revenue Court elected to try the question of title itself, and found that the plaintiff had not established her proprietorship and that decision became final. *Held*, in a subsequent suit in the Civil Court for a declaration of title, that the decision of the Revenue Court, although it constituted a *res judicata* as between the plaintiff and the then defendants, could not amount to a *res judicata* as between the plaintiff and the third parties whose rights those defendants had set up JAIMANGAL DEO *v* BED SARAN KUNWARI (1911) I. L. R. 33 All. 493

——— s. 11, O. II, r. 2.

See CIVIL PROCEDURE CODE (1882), ss. 13 AND 43 . I. L. R. 33 All. 302

——— ss. 43, 45.

See POLITICAL AGENT AT SIKKIM, COURT OF . . I. L. R. 38 Calc. 859

1. ——— s. 47—*Execution Court, if may investigate validity of decree—An order improperly passed under s 47, if appealable.* Where a jurisdiction is usurped by a Court in passing an order against which an appeal would lie, appeal against the order cannot be defeated by showing that the order was without jurisdiction. So where a Court purporting to act under s. 47, Civil Procedure Code, directed execution to proceed against a minor and an appeal was preferred on the ground that the decree sought to be executed did not bind the minor:—*Held*, that the fact that on the Appellant's own showing the minor would not be a party to the decree within meaning of s. 47 and thus the order would not be an order under s 47 would not make the appeal incompetent An execution Court must proceed on the assumption that there is a valid decree capable of execution and it is not open to it to investigate the validity of the decree or its binding character. BINDESWARI *v.* THAKUR LAKPAT NATH SINGH (1910) . 15 C. W. N. 725

2. ——— s. 47—*Limitation Act (IX of 1908), Art. 138—Transfer of Property Act (IV of 1882),*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 47—*contd.*

s. 90—Purchase by decree-holder—Suit to recover possession—Execution. In execution of a redemption decree the decree-holder (mortgagee) himself purchased the property at the court-sale After the confirmation of the sale, the legal representative of the decree-holder (mortgagee auction-purchaser) brought a suit to recover possession of the property so purchased. The defendants (representatives of the mortgagors judgment-debtors) contended that the question involved in the suit related to the execution of the decree ; therefore, the suit was not maintainable under s. 47 of the Civil Procedure Code (Act V of 1908) and that the plaintiff's remedy lay under O. XXI, r 5. The first Court allowed the claim. On appeal by one of the defendants :—*Held,* reversing the decree, that (i) The suit was barred by s 47 of the Civil Procedure Code (Act V of 1908). (ii) A decree-holder by becoming a purchaser at a court-sale did not cease to be a party to the suit within the meaning of s. 47 of the Civil Procedure Code. (iii) Proceedings for delivery of possession of property purchased by the decree-holder were proceedings in execution of the decree and fell within the scope of s. 47 of the Civil Procedure Code. (iv) Art. 138 of the Limitation Act (IX of 1908) did not override the provisions of the Civil Procedure Code. They should be read together. Where the auction-purchaser was also a party to the suit in which the decree was passed, his claim for the delivery of possession of the property purchased must be determined by the Court in the execution department. But where the auction-purchaser was a third party, it was open to him to bring a suit for possession of the property purchased by him and such a suit would be governed by twelve years' limitation under Art. 138 of the Limitation Act. (v) Under s 90 of the Transfer of Property Act (IV of 1882) the execution proceedings did not terminate with the sale The execution of the decree being barred at the date of the suit, it was not allowed to be treated as a proceeding in execution. SADASHIV BIN MAHADU *v* NARAYAN VITHAL (1911) . **I. L. R. 35 Bom. 452**

3. ——— **s. 47, O. XXI, rr. 95, 98**—*Application by purchaser at Court sale for delivery of possession against a purchaser of attached property subsequent to attachment maintainable under O XXI, r. 98—Res judicata—Erroneous decision in one execution proceeding that no appeal lay not res judicata in a subsequent proceeding.* A decree-holder who had purchased properties in execution of his decree and who was obstructed by a purchaser from the judgment-debtor after attachment, applied to the Court under O. XXI, r. 95, and obtained an order for delivery of possession. An appeal by the purchaser against the order was dismissed on the ground that no appeal lay as he claimed in his own right and not on behalf of the judgment-debtor. The auction purchaser being further resisted in attempting to take delivery applied under O. XXI, r. 98, for delivery and for commitment of the obstructing purchaser. *Held,* that the application under r 98 was maintainable as the resisting purchaser was the representative of the judgment-debtor within the meaning of s. 47 of the new Civil Procedure Code *Held,* also, that the erroneous appellate order in the previous proceeding that no appeal lay did not operate as *res judicata* KUPPANA KAVUNDAN v. KUMARA KAVUNDAN (1910) . . **I. L. R. 34 Mad. 450**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— s 47—*concld*

——— **s. 48, and Sch. I, O. XXI**—*Execution proceedings—Decree in Baroda Court—Transmission to Bombay High Court for execution—Application to execute—Limitation.* On 17th July 1903 the plaintiff obtained a decree in the Amreli Court, in the territory of His Highness the Gaekwar of Baroda On 12th May 1894 an application for execution was made. On 10th July 1905 a second application was made, the prayer being for the attachment of moveable properties of the defendant "in whatsoever villages and at whatsoever places in Okhamandal." Okhamandal being within the jurisdiction of the Amreli Court, the order for attachment was made. On 5th July 1909 the decree was transmitted on plaintiff's application to the Bombay High Court for execution ; and on 15th October 1909 an application for execution by attachment of property in Bombay was made. *Held,* that the application was a substantive application with regard to the property in Bombay, and being made more than 12 years after the date of the decree, was barred by the provisions of s. 48 of the Civil Procedure Code (Act V of 1908). An order by a Court passing a decree for the transmission of a decree for execution to another Court is not an order for the execution of the decree, nor is an application for the transmission of an application for execution *Hussein Ahmad Kaka* v. *Sayu Mahamad Sahid, I L R 15 Bom. 28,* distinguished JEEWANDAS DHANJI *v.* RANCHODDAS CHATURBHUJ (1910) . . . **I. L. R. 35 Bom. 103**

——— **s. 60**—"*Public officer*"—*Execution of decree—Limitation—Limitation Act (IX of 1908), Sch I, Art. 182, cl (5)—Attachment—Pay of officer of regular forces not attachable—Statutes 44 & 45 Vict, Cap. LVIII, s. 136—Statutes 58 & 59 Vict., Cap V, s. 4* An officer of His Majesty's regular forces serving in India is not a "public officer" within the meaning of s 60 of the Code of Civil Procedure, 1908. The pay of such an officer, therefore, is not liable to be attached in execution of a decree of a Court in British India. *Calcutta Trades Association* v. *Ryland, I. L. R 24 Calc. 102,* and *Watson* v. *Lloyd, I. L. R. 25 Mad. 402,* referred to. LECKY *v.* BANK OF UPPER INDIA, LIMITED (1911) . . **I. L. R. 33 All. 529**

——— **s. 73**—*Civil Procedure Code (Act V of 1908), ss. 73, 115—Assets if held by Court until whole of purchase-money deposited—Receiver, execution against—Leave of Court taken after application, if sufficient—Refusal to exercise juris-*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 73—*concld.*

diction from misapprehension of statute—Revision. Assets cannot be said to be held by the Court available for rateable distribution within the meaning of s. 73 of the Civil Procedure Code at the date of the sale, and until the whole of the purchase-money has been deposited. The Court cannot dismiss an application for rateable distribution merely on the ground that no leave had been obtained to proceed against a Receiver, who was one of the judgment-debtors, when such leave had in fact been obtained before the Court was called upon to make rateable distribution. *Banku Behari* v. *Harendra Nath, 15 C. W. N. 54*, applied. When the Court below has refused to exercise a jurisdiction vested in it by law, it is immaterial that such refusal is based upon a misapprehension of the true effect of the statutory provision on the subject, and the High Court will interfere in such a case in revision. *Amir Hassan*, v. *Sheo Baksh, L R. 11 I. A 237: s.c I. L R. 11 Calc. 6; Mahammad* v. *Abdul, L.R. 16 I. A. 104 s.c. I. L. R. 16 Calc. 749; Vishumbhar* v. *Vasudev, I. L. R 16 Bom. 708; Ross* v. *Petambar, I. L R. 25 All. 509*, referred to. MAHARAJA OF BURDWAN *v.* APURBA KRISHNA ROY (1911) . . . . **15 C. W. N. 872**

——— s. 80—

See CAUSE OF ACTION.
I. L. R. 38 Calc. 797

——— s. 92—

See CIVIL PROCEDURE CODE, 1882, SS. 30 AND 539 . **I. L. R. 33 All. 660**

——— s. 93—*Duties imposed upon Collectors —Duties not to be discharged by subordinate.* Duties which are imposed upon Collectors by Government under s 93 of the Civil Procedure Code (Act V of 1908) are of very special nature, the discharge of which often requires serious consideration and they may not be discharged by the Collector's subordinate. The conclusion that because an Assistant Collector was discharging the functions of the Collector under the provisions of s. 11 of the Land Revenue Code (Bom Act V of 1879) in revenue matters, he was, therefore, entitled to discharge his functions with reference to suits filed under s. 92 of the Civil Procedure Code (Act V of 1908), is erroneous. SOMCHAND BHIKHABHAI *v.* CHHAGANLAL (1911) . . **I. L. R. 35 Bom. 243**

——— ss. 99, 107, Sch. II—*Arbitration—Appellate Court, powers of—Reference once made unaffected by death of party.* An application for a reference to arbitration under Sch. II to the Code of Civil Procedure, 1908, may be made to an Appellate Court as well as to a Court of original jurisdiction, and the Court is bound to accept and act upon such application if made by all the parties interested in the appeal. When an application for arbitration has been made, it will not lapse by reason of the death of one of the parties : but if the right to sue survives, the arbitration must be proceeded with after substitution of the representatives of the deceased party. *Perumalla Setyanarayana* v. *Perumalla Venkata Rangayya, I. L. R. 27 Mad. 112*, referred to. DUTTA *v.* KHEDU (1911)
I. L. R. 33 All. 645

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 99—*concld.*

——— s. 100; O. XLV, r. 27—*Refusal to admit additional evidence in appeal—Discretion of Court—Appeal.* A refusal in the exercise of discretion to admit additional evidence under O. XLI, r. 27, of the Code of Civil Procedure, will not afford a ground for second appeal *Ram Piari* v. *Kallu, I. L. R. 23 All. 121*, followed. DURGA PRASAD *v.* JAI NARAIN (1911)
I. L. R. 33 All. 379

——— s 104, cl. (2); O. XLIII, r. 1 (*a*)—*Order returning a plaint for presentation to proper Court—Appeal—Case remanded to Court of first instance—Appeal from order of remand inadmissible.* A Munsif returned for presentation to the proper Court a plaint filed before him. Then plaintiff appealed against this order to the District judge, who transferred the appeal to a Subordinate Judge, who in turn remanded the case to the Munsif for trial on the merits: *Held*, that no appeal would lie from the appellate order of remand. NAUBAT SINGH *v.* BALDEO SINGH (1911)
I. L. R. 33 All. 479

——— s. 104, and Sch. II, r. 11—*Arbitration—Statement of special case for opinion of Court—Appeal from order of Court—Indian Arbitration Act (IX of 1899), s. 10.* In a suit filed for partition of joint family property, the parties agreed to refer the matter to arbitration, and a consent order of reference was taken. A similar agreement referred to the same arbitrators questions as to the partition of such immoveable property as was outside the jurisdiction of the Court in the suit. The arbitrators disagreed on certain points, but, instead of referring their differences (as the agreement of reference authorised them to do) to an umpire, they submitted their own opinions in the form of a special case for the opinion of the Court In doing so they purported to act under the provisions of the Civil Procedure Code (Act V of 1908), Sch. II, r. II, and of the Indian Arbitration Act (IX of 1899), s. 10 (*b*). The matter was decided by the Chamber Judge and an appeal was preferred against the decision. *Held*, that no appeal lay. Inasmuch as the special case was in no sense an award, it did not come within the Civil Procedure Code (Act V of 1908), Sch. II, r. 11 ; but, in so far as it related to the agreement which was not the subject of the Court's order, it fell under the Indian Arbitration Act (IX of 1899), s. 10 (*b*). PURSHOTUMDAS RAMGOPAL *v.* RAMGOPAL HIRALAL (1910)
I. L. R. 35 Bom. 130

——— ss. 105, 108, 109; O. XLI, r. 23—*Remand—Appeal—Privy Council. Held*, that an order remanding a case to the lower Appellate Court

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 105**—*concld.*

passed by the High Court under O. XLI, r. 23 of the Code of Civil Procedure, 1908, is not appealable to His Majesty in Council *Forbes* v. *Ameeroon-nissa Begum, 10 Moo I A 315, Mahant Ishvargar Budhgar* v *Caudasama Amarsang, I L R 8 Bom. 548, Saiyid Muzhar Hossein* v *Musammat Bodha Bibi, I. L R 17 All 112*, and *Radha Kishan* v. *The Collector of Jaunpur, I L. R 23 All 220*, referred to. AHMAD HUSAIN *v* GOBIND KRISHNA NARAIN (1911) . **I. L. R. 33 All. 391**

1. ——— **s. 109**—*Charter Act (24 & 25 Vict., Cap 104), s. 15*—"*Final order,*" "*passed in appeal,*" *order refusing application to sue in formâ pauperis, if*—*Letters Patent, s 39* An order passed by the High Court in the exercise of its revisional jurisdiction under s 115, Civil Procedure Code, or its power of superintendence under s. 15 of the Charter Act is an order made or passed on appeal within the meaning of s 109, Civil Procedure Code, or s 39 of the Letters Patent. The term "final order" in s 109 denotes an order which finally decides any matter which is directly at issue in the case in respect of the rights of the parties If the order in effect finally decides the cardinal point in the suit, if it decides an issue which goes to the foundation of the suit and therefore is an order which could never, while the decision stood, be questioned again in the suit, it is final within the section, notwithstanding that there may be subordinate enquiries to be made The question has to be decided with reference to the precise relation in which the order stands to the proceeding before the Court Whenever an application to sue in *formâ pauperis* is refused, the decision is not necessarily a final order within s 109, Civil Procedure Code The order is "final" when leave is refused on the ground that the allegations of the petitioner in the plaint does not disclose a cause of action against the defendant HARISH CHANDRA ACHARJA *v.* THE NAWAB BAHADUR OF MURSHIDABAD (1911) **15 C. W. N. 879**

2. ——— **s. 109, cl.** (*a*)—*Privy Council appeal to—Decree or final order, an order remanding a suit for taking accounts if.* An order setting aside the decision of the Court of first instance as to the respective shares of parties in a partnership and directing fresh accounts to be taken is such a final decision on the points in issue between the parties as to amount to a decree in the suit within the meaning of s 109, cl (*a*), Civil Procedure Code DWARKA NATH SARKAR *v* HAZI MAHOMED AKBAR (1910) . **15 C. W. N. 60**

——— **s 115**—

See ARBITRATION BY COURT
I. L. R. 38 Calc 421

See MAMLATDARS' COURTS ACT (BOM. II OF 1906), SS 19, 23
I. L. R. 35 Bom. 487

See PRESIDENCY SMALL CAUSE COURT.
I. L. R. 38 Calc. 425

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s 115**—*contd*

1. ——— *Criminal Procedure Code, s 195 (6)—Sanction to prosecute—Sanction granted by Munsif—Revisional powers of District Judge* One of the parties to a civil suit applied for sanction to prosecute the plaintiff, on the ground that he had instituted a false claim. The Munsif dismissed the application on technical grounds. The applicant applied to the District Judge under s 195 (6) of the Code of Criminal Procedure. The Judge remanded the case to the Munsif for trial of the application. *Held*, that the powers of revision exercisable by the District Judge were confined to those conferred by s 195, Criminal Procedure Code, and he had no jurisdiction to make the order of remand BENI PRASAD *v* SARJU PRASAD THAKURIA (1911) . . **I. L. R. 33 All. 512**

2. ——— *Interlocutory order—High Court's power of revision—Charter Act (24 & 25 Vict., c. 194), s 115—Revision where adequate remedy exists Quære* Whether s. 115 of the Civil Procedure Code or s. 15 of the Charter Act gives power to the High Court to interfere with interlocutory orders *Held*, that there is one common principle which governs its interference under both sections, *viz*, that it will not have recourse, ordinarily at least, to its revisional or superintending powers where there is another and an adequate remedy open to the applicant. An order refusing to amend the pleadings if erroneous may be corrected upon appeal from the decree to be passed in the suit. Such an order not being likely to cause irreparable injury should not be interfered with under the Charter Act. CHANDI RAY *v.* KRIPAL RAY (1911) . . **15 C. W. N. 682**

3. ——— The High Court will interfere with an interlocutory order, if irreparable injury would be caused to one of the litigants if matters were not set right. AMJAD ALI *v.* ALI HUSSAIN JOHAN (1910) . **15 C. W. N. 353**

4. ——— *Letters Patent, s. 39—Privy Council, leave to appeal to*—"*Final order*" *passed on appeal—Order passed by High Court on revision, if passed on appeal—Order relating to discovery, if final order—Order that Land Acquisition Judge cannot entertain objections to award by Government, if final order, when reference at claimants' instance still pending—Interlocutory order—Civil Procedure Code (Act V of 1908), ss. 109, 115.* Orders passed by the High Court in the exercise of its revisional jurisdiction under s. 115 of the Civil Procedure Code or of its power of superintendence under s 15 of the Charter Act, are orders made or passed on appeal within the meaning of s. 39 of the Letters Patent \ Whether a particular order is a final order within the meaning of s 109 of the Civil Procedure Code, for the purpose of granting leave to appeal to His Majesty in Council, must depend upon its nature and contents and its relation to the proceedings in which it has been made. As a general rule an order cannot rightly be considered final which settles a point only of several issues of law or fact, in other words, if the order

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 115—*concld.*

decides a question the solution of which cannot, whatever may be taken of it, terminate the proceeding before the Court, it cannot be appropriately called a final order An order of the High Court which dealt with the question of the propriety of an order of a Land Acquisition Judge for discovery is not a "final order" within the meaning of s 39 of the Letters Patent or s. 109 of the Civil Procedure Code. An order of the High Court holding that the Land Acquisition Judge could not review at the instance of the Secretary of State the award of the Collector, in so far as it was not challenged by the claimants, the objections of the claimants to the award still remaining to be determined by the Judge, was not a "final order" within the meaning of s. 39 of the Letters Patent and s. 109 of the Civil Procedure Code SECRETARY OF STATE FOR INDIA *v.* BRITISH INDIA STEAM NAVIGATION CO. (1910) . . . **15 C. W. N. 848**

——— s. 115, O. XI, r. 12—

See LAND ACQUISITION.
I. L. R. 38 Calc. 230

——— s. 144—*Decree—Interest, award of—Discretion of Court—Land Acquisition Act (I of 1894)—Court determining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—Interest over the excess—Inherent powers of the Court.* A sum of money by way of compensation awarded under the Land Acquisition Act (I of 1894) and paid into Court was taken out by the claimant. Subsequently on appeal, the High Court reduced the amount of compensation payable to him, but made no order as to interest Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court. *Held,* that the interest claimed should be awarded, inasmuch as the claimant had had the benefit of the money belonging to Government in excess of that to which the High Court held him to be entitled, and the benefit was represented not only by the excess wrongly taken by the claimant from the District Court but also the amount of interest which the excess carried. *Mookoond Lal Pal* v. *Mahomed Sami Meah, I. L. R. 14 Calc. 484, 486,* and *Govind Vaman* v. *Sakharam Ramchandra, I. L. R. 3 Bom. 42,* referred to. COLLECTOR OF AHMEDABAD *v.* LAVJI MULJI (1911) . **I. L. R. 35 Bom. 255**

——— s. 145, O. XLI, r. 5—

See EXECUTION OF DECREE.
I. L. R. 38 Calc. 754

——— 146—*Possession during attachment, if possession for owner—Recovery of possession, suit for, if may be maintained on the mere fact of possession for 11 years where no title proved by defendant—Title of third party if may be set up in defence.* Although an attachment under s. 146, Criminal Procedure Code, interferes with physical possession,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s 146—*concld.*

it does not affect the legal rights of the parties concerned and the property under attachment is held for the person ultimately shown to be entitled to possession. Where in a suit for recovery of possession of a *jalkar* attached by a Criminal Court under s. 146, Criminal Procedure Code, the plaintiff was found to have held exclusive and undisturbed possession of the *jalkar* for eleven years prior to attachment *Held,* that in the circumstances of the case such possession was evidence of a right to possess and unless a better title or antecedent possession was proved by the defendants, the plaintiff would be entitled to be maintained in possession against all but the true owner. *Nisa Chand Gaita* v *Kanchiram, I. L R 26 Calc. 579 s c. 3 C. W. N. 568,* doubted and distinguished. *Wise* v. *Amirunissa Khatun, L R 7 I. A. 73,* and *Sundar* v. *Parbati, L. R 16 I. A 186,* referred to. The rule laid down in the former case presupposes facts to which the provisions of s. 9, Specific Relief Act, apply SHYAMA CHARAN RAY *v* SURYA KANTA ACHARYA (1910) . **15 C. W. N. 163**

——— s 148, Sch. II, s. 15 (c)—

See ARBITRATION
I. L R. 38 Calc. 522

——— O. I, r. 10—*Limitation Act (IX of 1908, Art. 171—Partition suit—Death of a party—Abatement—Application to set aside the abatement—Limitation of sixty days—In a partition suit all parties should be before the Court—Inherent power of the Court to add a party at any stage of the suit for the ends of justice.* On the 5th April 1892 the plaintiff obtained a decree for partition and died in October 1893, leaving him surviving a minor son, who attained majority in February 1907. At a very late stage of the execution-proceedings, the son made an application on the 16th April 1910 for the issue of a commission to effect partition according to the rights declared in the partition decree. *Held,* that as soon as the Civil Procedure Code (Act V of 1908) came into force the suit abated so far as regarded the applicant's father who was a party, and the application to set aside the abatement by adding the applicant as the legal representative of the deceased not having been made within sixty days under Art. 171 of the Limitation Act (IX of 1908), the application was time-barred. *Held,* further, that in a partition suit all the parties should be before the Court, and that there was nothing in the Civil Procedure Code (Act V of 1908) limiting or affecting the inherent power of the Court to make such orders as might be necessary for the ends of justice. LAKHMICHAND REWACHAND *v.* KACHUBHAI (1911)
I. L. R. 35 Bom. 393

——— O. II, r. 2—

See CIVIL PROCEDURE CODE, 1882, s. 43.
I. L. R. 33 All. 244

See MAHOMEDAN LAW—DOWER.
I. L. R. 33 All. 291

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. V, rr. 15-23**—*Practice—Issue of summons—Summons transmitted for service to Court having jurisdiction in the place where defendant resides—Question of sufficiency or insufficiency of service to be determined by Court serving summons.* Where a summons is sent by a Court in which a suit is filed to a Court, within the jurisdiction of which the defendant resides, for service on the defendant, it is the serving Court and not the issuing Court with which, ordinarily speaking, rests the decision whether such summons has been properly served or not, though possibly there may be cases in which the issuing Court may find it necessary to re-open the question of service and to decide thereon. *Romanath Bural* v *Guggodonandan Sen, I L. R. 22 Calc 889*, dissented from The provisions of O. V, rr 15 to 23, discussed. DWARKA PRASAD *v.* BRIJ MOHAN LAL (1911) **I. L. R. 33 All. 649**

——— **O. V, r. 25**—*Practice—Procedure—Service of summons by registered post on defendant residing out of British India—Summons returned marked "Refused to take"—General Clauses Act (X of 1897), s. 27.* A summons was sent by registered post addressed to the first defendant at Navalgarh in the State of Jaipur and purported to be sent in accordance with the provisions of O V, r 25 of the Civil Procedure Code (Act V of 1908) The cover was returned with an endorsement in the vernacular which was translated as follows:—"Refused to take. The handwriting of Chunilal, postman." *Held*, that as it appeared that the cover was properly addressed to the first defendant and had been registered, duly stamped and posted, the Court was entitled to draw the inference indicated in s 27 of the General Clauses Act and to hold that there was sufficient service. *Per Curiam* The only rule, if it can be called a rule, to be laid down, is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover endorsed "refused" or words to the like effect *Jagannath Brakhbhau* v *J. E Sasoon, I L R 18 Bom 606*, distinguished. BALURAM RAMKISSEN *v.* BAI PANNABAI (1910) . . **I. L. R. 35 Bom. 213**

——— **O. IX, r. 13; O. V, r. 17**—

See SUBSTITUTED SERVICE. **I. L. R. 38 Calc. 394**

——— **O. XI, rr. 13, 18 (2)**—

See DISCOVERY . **I. L. R. 38 Calc. 428**

——— **O. XVII, r. 3; O. XLI, r. 27**—*Procedure—Order for parties to appear with witnesses at adjourned hearing—Default of plaintiff's witnesses—Dismissal of suit.* On the date fixed for the hearing of a suit the parties and their witnesses were present but, as there was some prospect of a compromise, the hearing was adjourned. On the adjourned date the plaintiffs were present, but their witnesses, though summoned, did not appear. The plaintiffs did not apply for an adjournment, nor did they ask the Court to enforce the attendance of their witnesses under order XVI, rule 10, of the Code of Civil Procedure, 1908, and the Court, acting apparently under O XVII, r. 3, of the Code, dismissed the suit The plaintiffs appealed, and the District Judge, dealing with the case as if the plaintiffs had made default in appearing remitted the case to the first Court to be disposed of according to law. *Held*, that the procedure of the District Judge was erroneous: he should have proceeded under O. XLI, r. 27, to direct the admission of fresh evidence, and under O XLI, r. 25, to refer the issues for trial to the Court of first instance. RAM NARAIN DUBE *v.* JAGDEO (1911) **I. L. R. 33 All. 690**

——— **O XX, r. 2**—*Judgment written but not delivered before transfer of Judge—Successor in office competent to pronounce his own judgment.* Where a judge fixed a date for delivering judgment, wrote it out and placed it upon the record, but was transferred before the date fixed, and his successor took a different view and delivered his own judgment *Held*, that his successor in office was not obliged to deliver the judgment but was competent to pronounce a judgment of his own in the case. *In the goods of Prem Chand, Moonshi, 44 Ch. D 262*, followed *Re Baker, Nicholas* v. *Baker, I L. R. 21 Calc 32*, referred to. LACHMAN PRASAD *v.* RAM KISHAN (1910) . **I. L. R. 33 All. 236**

——— **O. XX, r. 11**—*Civil Procedure Code (Act V of 1908), O XX, r. 11, and O XXXIV, r. 6—Personal decree against mortgagor—Court's discretion to direct payment by instalment—Judicial discretion—Second appeal* In making a decree under O. 34, r 6 of the Civil Procedure Code, against a mortgagor personally, the Court may direct the payment of the decretal amount in instalments under Or. 20, r. 11 of the Code. Whether or not the Court exercised a sound judicial discretion in making the order cannot be reviewed in second appeal. *Balgobindram Bhakat* v. *Chhedilal Saha, 11 C. L J 431*, distinguished BIDHU SEKAR BANDAPADHYA *v* SUDHURY MAHATABUDDIN (1911) . . . . **15 C. W. N. 1083**

——— **O XXI, r. 1**.—*Decree—Payment of money ordered in a decree—Payment ordered on a fixed date—Delay in making payment into Court owing to closing of Court—Payment on the opening day—General Clauses Act (X of 1897), s. 10—Practice* A decree provided as follows: "The plaintiff should pay, by the 10th day of April 1909, to the defendant R100. If the moneys are not paid by the plaintiff as agreed upon, the property in dispute will remain with the defendants by right of ownership and the plaintiff will have no right of ownership over the same" The plaintiff chose to pay the money into Court, and finding it closed on the 10th, she paid the money on the 14th April 1909, the day on which the Court re-opened. A question having arisen whether the payment so made was within the terms of the decree:—*Held*,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXI, r. 1—*concld.*

that the payment was properly made, for O. XXI, r. 1 of the Civil Procedure Code, 1908, intended to enact and did enact that payment into Court was a valid compliance with the decree even though the decree directed payment to the decree-holder. WANA MARD RAVJI *v* NATU WALAD MURHA (1910) . . . I. L. R. 35 Bom. 35

——— O. XXI, r. 16—

See MAINTENANCE ALLOWANCE.
I. L. R. 38 Calc. 13

——— O. XXI, rr. 18, 19, 20—*Execution of decree—Cross decree—Set off—Money decree—Decree for enforcement of charge.* *Held*, that under the Code of Civil Procedure, 1908, a Court is competent to set off a simple decree for recovery of money against a decree for recovery of money by enforcement of a charge. NAGAR MAL *v* RAM CHAND (1910) . . I. L. R. 33 All 240

——— Sch. I, O. XXI, r. 29—*Indian Arbitration Act (IX of 1899), ss. 11 and 15—"Award"* An award filed in Court under s 11 of the Indian Arbitration Act (IX of 1899) is nothing more than an award, although it is enforceable as if it were a decree. Execution of such an award cannot be stayed under Order XXI, rule 29 of the Civil Procedure Code (Act V of 1908) TRIBHUWANDAS KALLIANDAS GAJJAR *v.* JIVANCHAND LALLUBHAI & Co. (1910) . . I. L. R. 35 Bom. 196

——— O. XXI, rr. 57, 66 -

See EXECUTION OF DECREE
I. L. R. 38 Calc. 482

——— O. XXI, r. 89—*Execution of decree—Sale in execution of simple money decree, the decree-holder also holding a decree upon a mortgage of the property sold—Application by decree-holder to have sale set aside.* A decree-holder held two decrees against the same judgment-debtor, the one being a decree for sale on two mortgages, and the other a simple money decree. In execution of the latter decree the decree-holder caused part of the mortgaged property to be sold by auction, and it was purchased by a stranger. *Held*, that the decree-holder was not competent to apply under O. XXI, r. 89, of the Code of Civil Procedure, 1908, to get this sale set aside. MUHAMMAD AHMADULLAH KHAN *v.* AHMAD SAID KHAN (1911, I. L. R. 33 All. 481

——— O. XXI, r. 91—*Contract Act (IX of 1872), s. 18, cl. (3)—Stamp Act (II of 1899), s. 35—Court-sale—Discovery that the judgment-debtor had no saleable interest—Failure of consideration—Suit by auction-purchaser for possession or return of purchase money—Relations of the judgment-creditor and auction-purchaser—Suit not cognizable by Small Causes Court—Unstamped document regarded as non-existent.* A Court-sale purchaser, having discovered that the judgment-debtor had no saleable interest in the property sold, brought a suit against the judgment-creditor for recovery of

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXI, r. 91—*concld*

possession of the property, or in the alternative, return of the purchase money on the footing of total failure of consideration A question having arisen as to whether the suit was maintainable *Held*, that the suit was maintainable inasmuch as under the Civil Procedure Code (Act V of 1908) there was an implied warranty of some saleable interest when the right, title and interest of a judgment-debtor was put up for sale and the purchaser's right based on such implied warranty to a return under certain conditions of the purchase-money which had been received by the judgment-creditor was recognized. The relations of the parties, namely, the judgment creditor and the Court-sale purchaser were in the nature of contract *Held*, further, that such a suit, though the subject-matter was less than ₹500, was not cognizable by a Court of Small Causes, there being a prayer for possession of immoveable property. An unstamped document being inadmissible in evidence must be taken as non-existent. RUSTOMJI ARDESHIR IRANI *v* VINAYAK GANGADHAR BHAT (1910) I. L. R. 35 Bom. 29

——— OO. XXIII, XLI, r. 11—*Suit to recover possession—Dismissal of suit—Appeal—Application for withdrawal of suit with leave to bring a fresh suit—Power of the Court.* Plaintiff's suit to recover possession of lands having been dismissed by the first Court, he appealed to the District Court and, before the admission of the appeal, he applied to that Court for leave to withdraw the suit and bring a fresh suit. The application was heard and granted by the District Judge without any notice to the defendant The defendant having applied for revision, under the extraordinary jurisdiction (s 115 of the Civil Procedure Code, Act V of 1908), of the order granting the withdrawal :—*Held*, setting aside the order, that it was beyond the power of the Court to allow a withdrawal from a suit with leave to file a fresh suit on the same cause of action after the defendant had obtained a decree in his favour. EKNATH *v.* RANOJI (1911) . I. L. R. 35 Bom. 261

——— O. XXV, r. 1, Sch. I.

See PRACTICE . I. L. R. 35 Bom. 339

——— O. XXV, r. 1—*Woman plaintiff—Application for security for costs—Suit for defamation—Court's discretion* *N*, a widow, brought an action against *D*, praying that D might be restrained from repeating or publishing certain defamatory statements concerning *N* and that *D* might be ordered to pay ₹5,000 or such other sum as the Court should think fit as damages *D* took out a summons in Chambers calling upon *N* to show cause why she should not give security for the payment of *D*'s costs under O. XXV, r. 1, Civil Procedure Code (Act V of 1908). *Held*, that, under the circumstances of the case, it would be a wrong use of the Court's discretion if the Court practically defeated the suit at that stage when it was almost, if not quite, ripe for hearing, by ordering the plaintiff to lodge security. *Held*, further, that the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXV, r. 1**—*concld.*

Court was entitled, as a discretion was given it under the section, to exercise that discretion only upon certain terms which it was entitled to impose on the plaintiff NAMUBAI *v* DAJI GOVIND (1910) **I. L. R. 35 Bom. 421**

——— **O. XXXIII, r. 1**—*Inquiry into pauperism—Claim for redemption of mortgage—Applicant able to raise money upon security of equity of redemption. Held,* that a plaintiff seeking to sue for redemption *in formâ pauperis* cannot claim to sue as a pauper so long as he can raise money on his equity of redemption and that in so doing he will not in effect be mortgaging his claim *Vedanta Desikacharyulu* v *Perindevamma, I. L R 3 Mad. 249,* distinguished. KAPIL DEO SINGH *v* RAM RIKHA SINGH (1910) . **I. L. R. 33 All. 237**

——— **O. XXXIII, r. 13**—*Civil Procedure Code (Act XIV of 1882), s 412—Suit in formâ pauperis—Settlement of suit out of Court—Court passing no order for payment of Court-fees—Government applying for the payment—Practice and procedure.* A suit for partition brought *in formâ pauperis* was settled out of Court. On the 7th October 1908 the Court dismissed the suit but made no order for the payment of Court-fees under s 412 of the Civil Procedure Code of 1882. At that date Government had ninety days' time within which to apply to the High Court under its extraordinary jurisdiction. Before the expiry of the period the new Civil Procedure Code came into force. The Government, thereupon, applied to the Court under O. XXXIII, r. 12, for an order as to payment of Court-fees, but the Court declined to make the order. On appeal:—*Held,* (i) that the order passed by the Court under O. XXXIII, r 12, was an order within the meaning of s. 47, and it was therefore appealable; (ii) that, before the expiry of the period within which the Government could have applied to the High Court under the old Code, the new Code had come into force and by it the Government were enabled to apply to the Court for an order under r. 12 of O. XXXIII; (iii) that the suit having been dismissed there was a failure of it, and the right accrued to Government to have the Court-fee from the party defeated. SECRETARY OF STATE FOR INDIA *v* NARAYAN (1911) . . **I. L. R. 35 Bom. 448**

——— **O. XXXIV, rr. 4, 5; O. XLI, r. 20.**

See MORTGAGE . **I. L. R. 38 Calc. 913**

——— **O. XXXIV, r. 14**—*Transfer of Property Act (IV of 1882), s. 99—Repeal—Decree on mortgage—Execution sale—Proceeds insufficient to satisfy decree—Attachment of mortgagor's other property comprised in redemption decree for the recovery of the balance—Property attached to be sold. H* and *G* mortgaged their property A to *R* who also held in mortgage from the same mortgagors their other property B. *R* obtained a decree on the mortgage of property A for the recovery of the mortgage-deed

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXXIV, r. 14**—*concld.*

by sale of that property and the balance, if any, to be paid by the mortgagors. Subsequently the mortgagor *G, H* having died in the meanwhile, got a redemption decree against *R* with respect to property B. In execution of *R*'s decree, property A was sold but the sale-proceeds were not sufficient to satisfy the decretal debt *R*, thereupon, sought to recover the balance by execution against property B and the said property was attached. After attachment a question having arisen as to whether *R* could recover the balance of his decree by sale of property B in execution without instituting a suit for the sale of that property, *held,* that the Civil Procedure Code (Act V of 1908) in so far as it repealed s. 99 of the Transfer of Property Act (IV of 1882) and substituted in its place O. XXXIV, r. 14, merely effected a change of procedure in the manner in which mortgaged property has to be realized in execution of money decrees and, therefore, the statutory rule in force for the purpose of the execution of the unsatisfied portion of the decree on mortgage was the rule contained in O. XXXIV of the Civil Procedure Code (Act V of 1908). *R* was, therefore, entitled to an order that the attached property B be sold in execution of his decree with respect to property A. BAI GANGA *v.* RAJARAM ATMARAM (1911)

I. L. R 35 Bom. 248

——— **O. XXXIX, r. 1**—"*Wrongfully sold in execution of a decree*"—*Temporary injunction—Civil Procedure Code, 1882, s 492—Act No X of 1877, s. 492—Act No VIII of 1859, s 92. Held,* that when the words "wrongfully sold in execution of a decree" were added by the Legislature to the Civil Procedure Code of 1877, it was clearly intended that an injunction might be granted when property which the claimant claimed to be his was in danger of being sold in execution of a decree against another person or even against himself *In the matter of the petition of Chando Bibi, I L R. 26 All 311,* and *Meghraj Singh* v. *Lala Mal, 4 All. L. J. 342* (*Reporter's Diary*), overruled. *Brojendra Kumar Rai Chowdhuri* v. *Rup Lal Doss, I. L R. 12 Calc. 515, Ganga Nand* v. *Balgobind Das, All. Weekly Notes (1884), 349,* and *Kripa Dayal* v. *Rani Kishori, I L R. 10 All 80,* followed. ABDULLA KHAN *v.* BANKE LAL (1910) . . **I. L. R. 33 All. 79**

——— **O. XXXIX. r. 7**—*Inspection of property—Preparation of inventory, Court if may order—Interlocutory order—Interference on revision—Receiver, injunction, or inspection, whether proper remedy—Practice.* Whenever in respect of the property of one individual a right accrues to another which cannot be measured without inspection of the subject of the property, the Court is competent to compel the proprietor to permit that inspection as indispensable for administering the justice of the case Such inspection is no invasion of his rights but a legal consequence of the obligations affecting the property and the proprietor. The power to direct an inspection includes the power to direct the preparation of an inventory, if the Court is of

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXXIX, r. 7**—*concld*

opinion that the preparation of an inventory is essential for the proper decision of the case But in directing an inspection and preparation of an inventory, the matter should be so ordered as to cause the least inconvenience to the owner. AMJAD ALI *v.* ALI HUSSAIN JOHAR (1910)

15 C. W. N. 353

——— **O. XLI, r. 2** Under s 561, Civil Procedure Code, 1882 (O XLI, r. 2 of the Code of 1908), the Court may receive a memorandum of cross-objections at any time and it is not prevented from receiving it by the fact that only an application to file it in *formâ pauperis* was filed in time while the memorandum was filed out of time. *Quære* Whether s. 5 of the new Limitation Act (VIII of 1908) includes a memorandum of cross-objections. GOVIND RANI DASI *v* RADHA BALLAV DAS (1910)

15 C. W. N. 205

——— **O. XLI, r. 6 (2)**—*Rent decree—Order for sale of holding in execution—Refusal by Court to stay execution upon taking security—High Court's power to entertain original application under r 5 or to revise the order under r 6 (2)—Practice.* Where an order having been made for the sale of certain holdings in execution of decrees for rent, the Court refuses the judgment-debtor's application under O. XLI, r 6 (2) of the Civil Procedure Code to stay execution pending the hearing of appeals preferred by them against the decrees, the High Court may on the judgment-debtor's application under O. XLI, r. 5, stay execution, provided it appears to it that the conditions mentioned in cls (*a*), (*b*), and (*c*) to that rule have been fulfilled. But the High Court may also deal with the order of the lower Court under s 115 of the Code, and direct the execution to be stayed on the judgment-debtor furnishing sufficient security, in terms of O XLI, r. 6 (2). RAM NATH SINGH *v* KAMLESHWAR PROSAD SINGH (1911) . . **15 C. W. N. 432**

——— **O. XLI, r 12.** It is not competent to a Court of appeal under O 41, r. 12 of the Code to restrict an appeal to some specified grounds in admitting the appeal, and when an appeal is admitted the whole appeal and not any selected ground is open to discussion. LUKHI NARAIN SEROWJI *v.* SRI RAM CHANDRA BHUIYA

15 C. W. N. 921

——— **O. XLI, r. 21**—*Jurisdiction of Court to set aside ex parte decree against a defendant when another defendant's appeal against the decree dismissed.* Where a decree was passed against several defendants against some of whom it was *ex parte*, and a defendant who appeared unsuccessfully appealed against that decree, the Court passing the decree has jurisdiction to set aside the *ex parte* decree as against a defendant who had not appealed. *Damodar Manna* v. *Sarat Chandra, 13 C. W. N. 846; Kumud Nath* v. *Jotindra Nath, 13 C. L. J. 221*, referred to. *Dhonai Sardar* v. *Tarak Nath, 12 C. L. J. 53*, distinguished; and in so far as it lays down the contrary disapproved. INTU MEAH *v.* DAR BAKSH BHUIYAN (1911)

15 C. W. N. 798

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld*

——— **O. XLI, r. 21**—*concld.*

——— **O. XLI, rr. 23, 25**—*Remand—Preliminary point, a point involving merits of the case if.* A suit principally involved the consideration of two issues, *viz.*, (i) whether the plaintiff had title to the lands in suit, and (ii) whether they were entitled to *khas* possession The first Court finding against the plaintiff on the first point did not decide the second issue The lower Appellate Court reversed the finding of the first Court and remanded the suit for decision on the second issue : The High Court directed the lower Appellate Court to keep the case on his own file and if he thought necessary to refer the second issue for trial to the first Court under O XLI, r. 25. *Per* CHITTY, *J* — The decision of the Munsif was not on a preliminary point within the meaning of O XLI, r 23 The law as to remands under O XLI, r 25, has not changed the old law. *Per* COXE, *J* —When there are two points to be decided, and it is necessary for the decision of the second point that the first point must be first decided, the decision of the first point is necessarily preliminary to the decision of the second The question whether a point is connected with the merits of the case or only with considerations of law does not affect the question whether it is or is not a preliminary point. *Salim Sheikh* v. *Nazir Khan, 8 C. L. J. 159*, referred to. ABDUL KARIM *v.* FAYEZ BUX (1911) . **15 C. W. N. 575**

——— **O. XLI, r. 33**

See HINDU LAW—LEGAL NECESSITY.

I. L. R. 38 Calc 721

——— **O. XLV, r 13.**

See PRIVY COUNCIL, PRACTICE OF.

I. L. R. 38 Calc. 335

——— **O. XLVIII, r. 1**—*Review of judgment—Decisions after judgment sought to be reviewed—"New and important matter."* The plaintiff instituted a suit for ejectment The defendants pleaded that they were tenants of the plaintiff. The Munsif ordered the defendants to get a declaration of their tenancy. The Assistant Collector declared them to be tenants and the Munsif thereupon dismissed the suit On appeal, however, the Commissioner set aside the order of the Assistant Collector and this decision was upheld by the Board of Revenue. The plaintiff then applied within 90 days of the decision of the Board of Revenue for review of the Munsif's judgment. *Held*, that the judgments of the Commissioner and the Board were "new and important matters" within the meaning of O. XLVII, r. 1, of the Code of Civil Procedure. *Waghela Raisangji Shivsangji* v. *Shaik Masludin, I. L R. 13 Bom 330*, and *Waman Hari* v. *Hari Vithal, I L. R 31 Bom. 128*, referred to. RAM LAL *v.* KALKA PRASAD (1911)

I. L. R. 33 All. 566

CIVIL SUIT.

——— pendency of—

See CRIMINAL, PROCEEDINGS, STAY OF.
I. L. R. 38 Calc 106

CLAIM.

——— *Civil Procedure Code (Act V of 1908), O. XXI, rr 58, 60—Claim suit, if abates by attached property being sold—Crops wrongfully attached reaped and sold—Claimant if chargeable with costs of reaping—Indian Contract Act (IX of 1872), ss. 69, 70.* Where perishable things under attachment in respect of which a claim has been preferred are sold the claim is not extinguished but attaches to the sale-proceeds The decree-holder attached some standing crops Before the crops were reaped the claimant preferred his claim to a portion of the crops and prayed that reaping might be stayed pending the adjudication of his claim or that the crops on his share of the land be kept separate. This was not done and the crops were sold The claim was ultimately allowed: *Held*, that the claimant was not chargeable with the costs of reaping, as in attaching and selling the crops the decree-holders acted at their own peril and the claimant was not liable to pay those costs either under s. 69 or s 70 of the Indian Contract Act. *Dakhina Mohan* v *Saroda Mohan, I. L R. 21 Calc. 142, Tiluck Chand* v. *Soudamini, I. L. R 4 Calc. 566, Abdul Wahid* v. *Shaduka Bibi, I L R. 21 Calc. 496, Goma Mahad* v. *Gokaldas, I L. R. 3 Bom 74, Peruvian Guano Co* v. *Dreyfus Brothers, [1892] A. C. 166*, referred to RASIK CHANDRA GHOSE *v.* JITENDRA KUMAR GHOSE (1910)
15 C. W. N. 817

CO-ACCUSED.

——— confession of—

See CONFESSION I. L. R. 38 Calc. 446

See CONFESSION, RELEVANCY OF
I. L. R. 38 Calc. 559

——— plea of guilty by—

See CONFESSION I. L. R. 38 Calc. 446

COAL MINES.

See MINES . I. L. R. 38 Calc. 372

COERCION.

——— evidence of—

See WILL . I. L. R. 38 Calc. 355

COLLECTOR.

See CIVIL PROCEDURE CODE, 1882, SS. 276, 295, 320, 325A
I. L. R. 35 Bom. 516

See CIVIL PROCEDURE CODE, 1908, s. 93.
I. L. R. 35 Bom. 243

See LAND ACQUISITION.
I. L. R. 38 Calc. 230

COLLECTOR—*concld.*

——— powers of—

See LAND REVENUE CODE (BOM. ACT V OF 1879), s. 79A.
I. L. R. 35 Bom. 72

——— suit against, without notice—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 424 I. L R. 35 Bom. 42

COLLECTOR'S CERTIFICATE.

See HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 10 AND 13
I L. R. 35 Bom. 146

COMMISSIONER'S FEES.

——— *Commissioner's fees how realised—If to be made part of decree—Partition suit* Where a decree in a partition suit entitled the Commissioner to realise by execution the sum awarded to him on account of his fees and expenses *Held*, that the Commissioner, who was an officer of the Court, ought not to have been placed in this position The proper course for the Court would have been to call upon the decree-holder to deposit in Court the full amount determined to be payable to the Commissioner and the decree ought not to have been drawn up till such sum had been deposited NANDA LAL SIRKAR *v.* BENODE BEHARY ROY (1910). 15 C. W. N. 221

COMMITMENT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898). s. 209.
I. L. R. 35 Bom. 163

COMMON CARRIERS.

——— liability of—

See CARRIERS ACT, s. 6
15 C. W. N. 226

1. ——— Contract of carriage—*Excepted risk—Construction—Negligence, indemnity against—Carriers Act (III of 1865), ss. 6, 8, 9—Insurance policy "warranted no recourse against carriers"—Subrogation—Right to recover—Misjoinder—Damages.* Goods were shipped on a flat belonging to the carriers under a bill of lading endorsed to the Manufacturing Company, by clause 5 whereof "the carriers were exempt from loss of the goods, unless such loss should have arisen from the negligence or criminal acts of their servants or agents" There was an existing agreement between the Maunfacturing Company and the carriers, by clause 10 whereof "the Manufacturing Company undertook and agreed to hold the carriers harmless and indemnified from and against all claims which could be insured against or covered by an ordinary F. P A. policy." An ordinary F. P A policy was issued by the Insurance Company in favour of the Manufacturing Company in respect of the goods, having the clause "warranted no recourse against carriers." The goods were lost by the negligence of the carriers, and the

COMMON CARRIERS—*concld*

Insurance Company paid the Manufacturing Company the amount of the policy In an action for the loss of the goods, brought by the Insurance Company and the Manufacturing Company against the Carrying Company, as common carriers :— *Held*, that the action lay. The rights and liabilities of the common carrier in India are outside the Indian Contract Act, and are governed by the principles of the English Common Law as modified by the Carriers Act. A common carrier is subjected to two distinct classes of liability, (i) insurable risks from which the element of default is absent, and (ii) carrying risks, in which that element is present. English Courts in dealing with exemption clauses recognise this distinction and construe them as not extending to carrying risks in the absence of clear words to that effect. *Price & Co* v. *Union Lighterage Company*, [*1904*] *1 K. B 412 ; James Nelson & Sons, Limited* v. *Nelson Line (Liverpool), Limited (No 2)*, [*1907*] *1 K B. 769 ; Wyld v Pickford, 8 M. & W 443 ; D'Arc* v. *London and North-western Railway Company, I. L. R 9 C P. 325 ; Martin* v. *The Great Indian Peninsula Railway Company, L. R 3 Ex 9 ; Czech* v. *General Steam Navigation Company, L R 3 C P 14 ;* and *Crouch* v. *The London and North-Western Railway Company, 23 L. J. C P. 73*, referred to. *Baxter's Leather Company* v. *Royal Mail Steam Packet Company*, [*1908*] *2 K B 626*, distinguished. *A fortiori*, in India where there is statutory prohibition against exempting a carrier from loss arising from negligence and criminal acts, this canon of construction should be adopted, at any rate within the limits implied in the prohibition Clause 10 of the Agreement must be construed as an integral part of the contract of carriage : it did not extend to loss arising from negligence or criminal acts The stipulation in the policy " warranted no recourse against carriers " did not amount to a relinquishment by the Insurance Company in respect of risks not exempted, *i e*, where the loss had arisen from the negligence of the carriers. *Thomas & Co* v *Brown, 4 Com Cas 186*, distinguished. Inasmuch as the Insurance Company claimed by way of subrogation, and not assignment, the suit should have been brought only in the name of the Manufacturing Company *Burnand* v. *Rodocanachi, L. R 7 A. C. 333*, and *Simpson* v *Thomson, L R. 3 A C 279*, referred to. BRITISH AND FOREIGN MARINE INSURANCE CO., LD *v* INDIA GENERAL NAVIGATION AND RAILWAY CO., LD. (1910) . **I. L. R. 38 Calc. 28**

2. ——— **Notice of loss**—*Carriers Act (III of 1865), s. 10—Waiver of Notice* Under s 10 of the Carriers Act, before suit, notice of loss must be given to the carrier by the plaintiff Knowledge of the loss derived *aliunde* by the carrier is not sufficient. BRITISH AND FOREIGN MARINE INSURANCE CO., LD. *v.* INDIA GENERAL STEAM NAVIGATION AND RAILWAY CO., LD. (1910) **I. L. R. 38 Calc. 50**

CO-MORTGAGEES.

See MORTGAGE . **I. L. R. 38 Calc. 342**

COMPANIES ACT (VI OF 1882).

——— **ss. 77, 173**—*Voluntary winding up—Special resolution—Notice of extraordinary meeting for passing special resolution for voluntarily winding up and its confirmation—If waiver by shareholders of defects of notice would make appointment of liquidator valid—If creditors may question legality of voluntary winding up and appointment of liquidator.* Notice was given calling an extraordinary general meeting of the shareholders to consider the position of the Company and, if necessary, to pass a special resolution that the Company be voluntarily wound up and liquidators appointed and the notice stated further that in the event of the resolution being passed a special meeting would be held immediately after for confirming the resolution : *Held*, that the notice was bad as under ss 77 and 173 (*b*) of the Indian Companies Act, at least 14 days' further notice should have been given for confirmation of a special resolution for voluntarily winding up the Company Nor could it be treated as a proper notice calling a meeting to pass an extraordinary resolution for the voluntary winding up of the Company within s. 173 (*c*) of the Act. *In re Silkstone Fail Colliery Co , 1 Ch. D. 38*, followed. That whether or not the subsequent meeting of the shareholders for fixing the remuneration of the liquidator cured the legal defect of the notice and validated the appointment, it was open to the creditors of a Company to question whether the liquidators were appointed in accordance with the law *In the matter of* INDIAN TRADING & ENGINEERING CO , LD (1911) **15 C. W. N. 1047**

——— **s. 169**—*Company—Winding up—Appeal—Notice of appeal—Limitation* On the 3rd of December. 1910, the District Judge of Aligarh made an order for the winding up under the supervision of the Court of a company called the Shri Baldeo Mills Company, Limited. On the 7th of February, 1911, an application by some of the shareholders to reconsider the winding up order was dismissed. On the 25th of February, 1911, the applicants appealed to the High Court, ostensibly against the order of the 7th of February, 1911, but in effect against the winding up order of the 3rd of December, 1910. No notice of this appeal was served on the respondents until at the earliest the 25th of March 1911. *Held*, that the appeal was time-barred in view of s 169 of the Indian Companies Act, 1882. *Ramanappa* v. *The Official Liquidator, Bellary Brucepetta Stock and Loan Transacting Company, Limited, I. L R. 22 Mad 291 ; Lakshminarasayya Setti* v *Venkanna Setti, I. L R. 22 Mad. 576 ; Wall* v. *Howard, I. L. R 18 All 215*, and *In re Sarawak and Hindustan Banking and Trading Company, Limited, I. L R. 4 Calc. 704*, referred to. GHISU MAL *v.* THE OFFICIAL LIQUIDATOR, SHRI BALDEO MILLS COMPANY, LIMITED (1911) **I. L. R. 33 All. 641**

COMPANY.

See COMPANIES ACT (VI OF 1882), S. 169. **I. L. R. 33 All. 641**

COMPENSATION.

See COMPENSATION TO ACCUSED.
I. L. R. 38 Calc. 302

See INTEREST . I L. R. 35 Bom. 255

See LAND ACQUISITION ACT (I OF 1894), S. 18 . . I. L. R. 35 Bom. 146

COMPENSATION TO ACCUSED.

——— *Order of compensation made in a separate proceeding after and not in the order of discharge—Legality of the proceeding—Criminal Procedure Code (Act V of 1898), s. 250, prov. (b).* S. 450 of the Criminal Procedure Code requires that before a Magistrate makes it a ground for discharging an accused that the complaint was frivolous and vexatious he shall hear the complainant on that aspect of the case, and unless he does so the order of compensation is without jurisdiction. The order awarding compensation must be contained in the order of discharge or acquittal and not passed in a separate proceeding after the accused has been discharged or acquitted. *In the matter of the complaint of Safdar Hussain, I. L. R. 25 All. 315,* followed HARU TANTI *v* SATISH ROY (1910)
I. L. R. 38 Calc. 302

COMPLAINT.

——— dismissal of, without issue of process—

See MALICIOUS PROSECUTION.
15 C W. N. 917
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——— petition asking police warning, if—

See CRIMINAL PROCEDURE CODE, S 4 (*m*).
15 C. W. N. 1052

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I. L. R. 35 Bom. 322

See CRIMINAL PROCEDURE CODE, S 145.
15 C. W. N. 568

See 'DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 15B, CL. (2).
I. L. R. 35 Bom. 190

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I. L. R. 33 All. 356

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I. L. R. 33 All 457

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CONCURRENT SENTENCES.

See CRIMINAL PROCEDURE CODE, S. 413.
15 C. W. N. 734

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CONFESSION.

See ADMISSIONS AND CONFESSIONS.

See CONSPIRACY TO WAGE WAR
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——— admissibility of, against a co-conspirator—

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I. L. R. 38 Calc. 169

——— to Magistrate after arrest—

See CONSPIRACY TO WAGE WAR
I. L. R. 38 Calc. 169

——— relevancy of—

See CONSPIRACY TO WAGE WAR.
I. L. R. 38 Calc. 559

——— *Joint trial—Plea of guilty by co-accused—Acceptances of plea by the Court and removal of co-accused from the dock—Trial of remaining prisoner alone—Admissibility of confession of co-accused against prisoner on trial—Evidence Act (I of 1872), s. 30* Where a co-accused pleads guilty, and the Court has accepted the plea and directed his removal from dock, and the trial proceeds against the remaining prisoner alone, a confession by the former is not admissible under s. 30 of the Indian Evidence Act, 1872, against the latter. *Queen-Empress* v. *Pahuji, I. L. R. 19 Bom. 195,* approved. EMPEROR *v* KERAMAT SIRDAR (1911) . . . I. L. R. 38 Calc. 446

CONFIRMATION OF SALE.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 306, 350.

CONFISCATION.

——— of boat—

See OPIUM ACT, S. 11.
15 C. W. N. 296

CONSENT DECREE.

See JURISDICTION
I. L. R. 38 Calc. 639

See MORTGAGE . I. L. R. 35 Bom. 371

——— *Parties—Hindu Widow—Reversionary heirs—Confession of judgment.* When in a suit between a Hindu widow, and a claimant to the estate of her husband, a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent-decree made, the decree was not binding upon the reversionary heirs. A Hindu widow, who is a limited or qualified owner, cannot confess judgment and be party to a consent decree so as to bind the inheritance in the hands of the reversionary heirs. *Katama Natchier* v. *The Rajah of Shivagunga, 9 Moo I. A. 539, Stapilton* v. *Stapilton, 1 White & Tud 8th Ed. 234 ; 1 Atk. 2,* distinguished. *Imrit Konwar* v. *Roop Narain Singh, 6 C. L. R. 76,* explained. *Sheo Narain Singh* v. *Khurgo Koerry, 10 C. L. R. 337 ; Sant Kumar* v. *Deo Saran, I. L. R. 8 All. 365 ; Jeram Laljee* v. *Veerbai, 5 Bom. L. R. 885 ; Gobind Krishna Narain* v.

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Khunni Lal, I. L. R. 29 All. 487; Mahadei v. *Baldeo, I. L. R. 30 All. 75 ; Roy Radha Kissen* v. *Nauratan Lall, 6 C. L. J. 490 ; Asharam Sadhani* v. *Chandi Churn Mukerjee, 13 C. W. N. 147*, referred to. A consent decree does not operate to the prejudice of persons not parties thereto. *Nicholas* v. *Asphar, I. L. R. 24 Calc. 218, In re South American and Mexican Company*, [1895] *1 Ch. 37*, and *The Bellcairn, 10 P. D. 161*, distinguished. *Huddersfield Banking Company, Limited* v. *Lister*, [*1895*] *2 Ch. 273*, followed. RAJLAKSHMI DASSEE *v* KATYAYANI DASEE (1910) . . **I. L. R. 38 Calc. 639**

CONSIDERATION.

See EVIDENCE . **I. L. R. 33 All. 483**

——— failure of—

See CONTRACT ACT (IX OF 1872), S 18, CL (3) . . **I. L. R. 35 Bom. 29**

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CONSPIRACY.

See EVIDENCE ACT, S 10. **15 C. W. N. 25**

——— charge of—

See CONSPIRACY TO WAGE WAR. **I. L. R. 38 Calc. 559**

CONSPIRACY TO WAGE WAR.

1. ——— Admissibility of confession against a co-conspirator jointly tried—*Confession of conspirator made to a Magistrate after arrest—Evidentiary value of such confession—Evidence Act (I of 1872), ss. 10, 30—Penal Code (Act XLV of 1860), s. 121A.* A confession by a conspirator made to a Magistrate after arrest disclosing the existence of a conspiracy, its objects and the names of its members, is not admissible, under s. 10 of the Evidence Act, against the co-conspirators jointly tried with him, but only under s. 30 of the Act. S. 10 is intended to make as evidence communications between different conspirators while the conspiracy is going on with reference to the carrying out of the conspiracy. The confession of a co-accused was not intended to be put on the same footing as a communication passing between conspirators or between conspirators and other persons with reference to the conspiracy. The evidentiary value of such a confession, under s. 30, is not higher than that of the statement of an accomplice, and it cannot be acted upon unless corroborated by independent testimony implicating the accused in the design with which they are charged. EMPEROR *v.* ABANI BHUSHAN CHUCKERBUTTY (1910) . **I. L. R. 38 Calc. 169**

2. ——— Acquittal, effect of—*Acquittal on charge of conspiracy under s 121A, Penal Code (Act XLV of 1860)—Subsequent trial of others on identical charge—Evidence in latter trial of what acquitted prisoner had said or done, if admissible.* It would be a dangerous principle to adopt to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates. *R.* v. *Plummer*, [*1902*] *2 K. B. 339*, relied on. One *I* was charged with conspiracy to wage war against the King under s. 121A, Indian Penal Code, and acquitted. In a subsequent trial of others on an identical charge, it was *held* that what he said or did cannot be admitted in evidence at such trial in view of his acquittal. EMPEROR *v* NONI GOPAL GUPTA (1910) . . . **15 C. W. N. 646**

3 ——— Charge of conspiracy—Acquittal, effect of—*Penal Code (Act XLV of 1860), s. 121A—Whether persons charged with one conspiracy, can be found guilty of different conspiracies—Whether person acquitted can be charged with same offence as part of a conspiracy—Discharge, effect of—Accomplice—Corroboration—Verification proceedings, whether corroboration of accomplice or confession—Confession, relevancy of, against co-accused—Evidence Act (I of 1872), s 30—Retracted confession, unreliability of* Where the accused were charged with conspiracy with persons "known and unknown"—*Held*, that if the persons were "known," they should be named in the charge. Where a person has been tried for a specific offence and acquitted, and he is subsequently charged with conspiracy of which that offence is alleged to form a part:—*Held*, that an acquittal is conclusive; and it would be a very dangerous principle to regard a judgment of not guilty as not fully establishing the innocence of the person to whom it relates. *Rex* v. *Plummer*, [*1902*] *2 K. B. 339*, referred to. The course of not making completed offences the subject of a separate trial, but of throwing them into a case of conspiracy, though lawful, is not to be commended. Before the testimony of an accomplice can be acted on, it must be corroborated in material particulars. There must be corroboration not only as to the crime, but also as to the identity of each one of the accused. This is no technical rule, but one founded on long judicial experience. For a conspiracy to wage war, no act or illegal omission is necessary; the agreement of two or more will suffice. While admissions, which include confessions, are by s 21 of the Evidence Act, 1872, declared *relevant* and may be proved as against the persons making them, all that s. 30 of the Evidence Act provides is that the Court *may* take them into consideration as against other persons. This distinction of language is significant, and shows that the Court can only treat a confession as lending assurance to other evidence against a co-accused, and a conviction on the confession of a co-accused alone would be bad in law. Moreover, under s. 30, that only can be taken into consideration which is a confession in the true sense of the term, so that to place any reliance on a retracted confession against a co-accused would be most unsafe. *Yasin* v. *Emperor, I. L. R. 28 Calc. 689*, referred to. Verification proceedings do not add any value to an approver's evidence or to confessions, and cannot be regarded as corroboration. A discharge is not binding on the Court, for it is not equivalent to an acquittal. Still a discharge means that the Magistrate, after taking the evidence found that there

CONSPIRACY TO WAGE WAR—*concld.*

were not sufficient grounds for committing the accused for trial. A retracted confession cannot ordinarily take the place of legal proof. Where several persons are charged with the same conspiracy, it is a legal impossibility that some should be found guilty of one conspiracy and some of another, and any accused not shown to be a member of that conspiracy is entitled to demand an acquittal EMPEROR *v.* LALIT MOHAN CHUCKERBUTTY AND OTHERS (1911)
I. L. R. 38 Calc. 559

CONSTRUCTION

See CONSTRUCTION OF DOCUMENTS.

See CONSTRUCTION OF STATUTES.

See MORTGAGE . **15 C. W. N. 722**

See WILL . **I. L. R. 38 Calc. 327**

CONSTRUCTION OF DOCUMENTS.

See HINDU LAW WILL.
I. L. R. 33 All. 41

See MAHOMEDAN LAW—DOWER.
I. L. R. 33 All. 421

See MORTGAGE . **I. L. R. 33 All. 107**

See PENSIONS ACT (XXI OF 1871), SS 3, 4, 6 AND 8 . **I. L. R. 33 All. 580**

See PRE-EMPTION
I. L. R. 33 All. 85 ; 104 ; 296 ; 299

See WILL . **I. L. R. 33 All. 558**

1. ———— **Deed of sale followed after an interval by an agreement for repurchase** —*Sale—Mortgage by conditional sale.* A document purporting to be an out and out sale-deed was executed on a certain date and seven days later a second document was executed by the vendee whereby he covenanted to reconvey the property, sold if the vendors paid back the purchase-money after the lapse of nine or ten years from the date of that sale-deed The two deeds were separately stamped and were registered on different dates. *Held*, in view of the delay intervening between the two deeds and other circumstances attending their execution, that the two deeds were not intended to be parts of one and the same transaction so as together to constitute a mortgage by conditional sale, but must be construed separately, and were merely what they purported to be *Bhagwan Sahai* v. *Bhagwan Din, I L R 12 All. 387*, followed *Balkishen Das* v. *Legge, I. L. R. 22 All. 149*, distinguished JHANDA SINGH *v.* WAHID-UD-DIN (1911) . . . . **I. L. R. 33 All. 585**

2. ———— **Mortgage**—*Sale subject to agreement executed on the same day reserving right of vendor to repurchase—Documents to be read together.* Two documents were executed by the same parties on the same day. The first purported to be an out and out sale of certain property, but was expressed to be "subject to the terms of the deed of agreement executed by the vendee." The agreement referred to was an agreement under certain conditions to reconvey the property purchased.

CONSTRUCTION OF DOCUMENTS—*concld*

Held, that in the circumstances the two documents must be read together as constituting a mortgage by conditional sale. *Bhagwan Sahai* v *Bhagwan Din, I L R 12 All 387*, distinguished. WAJID ALI KHAN *v* SH AFAKAT HUSAIN (1910)
I. L. R 33 All. 122

3 ———— *Sale—Agreement to repurchase executed on same day—Mortgage by conditional sale.* When what purported to be an out and out sale was accompanied by a contemporaneous agreement given to the vendor a right of repurchase within five years at the same price, it was *held* that the transaction was what it purported to be, and could not be construed as a mortgage by conditional sale *Bhagwan Sahai* v. *Bhagwan Din, I. L R 12 All 387*, followed. *Vasudeo* v. *Bhau, I L R. 31 Bom 528*, referred to. GHULAM NABI KHAN *v.* NIAZ-UN-NISSA (1910)
I. L. R. 33 All. 337

4. ———— **Will**—*Devise of one kind of property accurately described exclusive of other somewhat similar property not mentioned in the will.* By his will a testator devised to his wife shares in certain *pattis*, of which the numbers were given, in the village of Hariah, describing the property as in his separate possession *Held*, that this description would not pass shares in *shamilat pattis* in the village which were not mentioned or referred to in the will. TULSHA *v* MATHURA PURI (1910)
I. L. R. 33 All. 66

5 ———— *Will—Gift—Property given to two brothers who were joint—Nature of taken by brothers—Hindu law* Where property is given or devised, without specification of the individual interests of the recipients, to persons who are members of a joint Hindu family, it does not follow that they take such property as joint property, the principle of joint tenancy being unknown to Hindu law save in connection with the joint Hindu family. *Jageswar Narain Deo* v. *Ram Chandra Dutt, I L. R 23 Calc 670, Bai Diwali* v. *Patel Bechardas, I. L R 26 Bom 445*, and *Gopi* v. *Jaldhara, I. L. R. 33 All 41*, referred to. *Mankamna Kunwar* v. *Balkishan Das, I L R 28 All. 38*, doubted. KISHORI DUBAIN *v* MUNDRA DUBAIN (1911) . . . . **I. L R. 33 All. 665**

CONSTRUCTION OF STATUTES.

See STATUTE, CONSTRUCTION OF.

CONTEMPORANEOUS AGREEMENT.

See EVIDENCE ACT (I OF 1872), S 92, PROV. I.
I. L. R. 35 Bom. 93

CONTEMPT OF COURT.

See CIVIL PROCEDURE CODE, 1882, S 170
I. L. R. 33 All. 66

———— *Its quasi-criminal character—Comments reflecting on witness and party under cross-examination, if contempt—Contempt proceedings, strict observance of rules of practice in—Application by private party—If applicant to name*

CONTEMPT OF COURT—*concld.*

the person charged with contempt—Court taking notice of its own initiative, practice different—Rule issued against editor, printer, publisher without naming them on application of private party, if to be discharged—Person charged, waiving objection subject to question of costs—When apology accepted by Court, it would allow costs when rule omitted name An article in a newspaper reflecting on the party to a suit more especially when he is a witness under cross-examination is a contempt of Court. Proceedings in contempt are of a *quasi*-criminal character and all the rules of Court must be observed strictly in respect thereof. Where a private party applied for a rule against the editor, printer and publisher of a newspaper alleging contempt of Court and omitted to name them respectively —*Held*, that the rule was liable to be discharged If the persons concerned waive the objection and offer apology which is accepted by Court, the Court would not order any costs against them when the rule omitted to name them WESTON *v.* EDITOR, PRINTER AND PUBLISHER OF THE " BENGALEE " (1911) **15 C. W. N. 771**

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See DECREE . **I. L. R 38 Calc. 125**

CONTRACT.

See CONTRACT ACT.

See AGRA TENANCY ACT (II OF 1901) SS. 10, 20, 83 . **I. L. R. 33 All. 695**

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See SPECIFIC PERFORMANCE. **1 C. W. N. 931**

——— to pay money—

See MARRIAGE . **15 C. W. N. 447**

1. ——— Sale—Deposit—*Failure of purchaser to complete contract—Vendor entitled to retain deposit.* Plaintiff agreed to purchase 500 bales of cotton yarn from defendants and to deposit 5 rupees per bale as earnest money. He deposited somewhat more than half of the earnest money and thereafter repudiated the contract *Held*, that plaintiff was not entitled to recover that portion of the earnest money which he had paid. *Collins* v. *Stimson, 11 Q. B D 142, Howe* v. *Smith, L. R. 27 Ch. D. 89, Ex parte Barrell, In re Parnell, I. L. R. 10 Ch. App. 512*, and *Bishan Chand* v. *Radha Kishen Das, I L. R. 19 All 489*, referred to. ROSHAN LAL *v.* THE DELHI CLOTH AND GENERAL MILLS COMPANY (1910) . **I L. R. 33 All. 166**

2. ——— Suit for damages for breach of contract in not supplying railway sleepers according to contract—*Specification of Railway Company as to dimensions and quality of sleepers—Implied warranty where agents had knowledge of purpose for which the sleepers were required—Stipulation that " passing " of sleepers was to be by manufacturer, a party to contract—Requirements in such a case—Insufficiency of means taken to make sleepers conform with the contract—" Passing " of sleepers not reliable.* In this case the respondent was

CONTRACT—*contd.*

the transferee of contracts entered into by one Iyer (1) with the Madras Railway Company to supply them with 1,500 sleepers, and (11) with the appellants through their agents at Madras to purchase from them 1,500 sleepers to enable him, as he stated to the appellants' agents, to carry out his contract with the Madras Railway Company the basis of which was a specification of the Railway Company's requirements in the matters of dimensions and quality. The contract with the appellants through their agents was contained in letters which passed between the parties, and was never embodied in a formal instrument In one of the letters written by the agents to Iyer it was stipulated that " the passing of our Moulmein or Rangoon friends the Bombay-Burmah Trading Corporation " (the appellants) " is as usual final as regards both measurement and quality " On the transfer of the contracts to the respondent a formal agreement was drawn up between him and the Madras Railway Company and duly executed by both, and in it the description of the sleepers to be supplied was practically identical with that in the specification of the Railway Company, and the stipulation as to the " passing " of the sleepers was again insisted upon in the correspondence between the appellants' agents and the respondent. In a suit by the respondent for damages in consequence of the rejection by the Railway Company of a quantity of the sleepers as not being in accordance with the contract nor fit for the purpose for which they were required, one of the questions raised was whether Iyer had ever given a copy of the specification of the Railway Company to the appellants' agents and so made it the basis of his contract with the appellants. As to this the first Court found that he did so, and the Appellate Court came to a contrary conclusion: *Held*, that it was unnecessary to decide the question, *first*, because their Lordships concurred with the opinion of the Court of Appeal that " the evidence showed that the specification merely contained an enumeration of the qualities of a good sleeper usually insisted on by railway authorities;" *secondly*, because the appellants having through their agents been fully informed of the purpose for which Iyer purchased the sleepers from them must be taken to have impliedly warranted that they were reasonably fit for that purpose; and, *thirdly*, because their Lordships thought that a sleeper the qualities of which were inferior to those " of a good sleeper as usually insisted on by railway authorities " could not well be considered a sleeper of the dimensions specified reasonably fit for use by the Madras Railway Company: and the point was therefore irrelevant. Another question was whether the main defence of the appellants that they had not contracted to supply the sleepers in accordance with the specification of the Railway Company but according to the stipulation as to the " passing " of the sleepers in the contract between themselves and Iyer which was confirmed by them on the transfer of the contract to the respondent, was maintainable. On this point the Courts below also differed, the first

CONTRACT—*concld.*

Court deciding in favour of the appellants, and the Court of appeal in favour of the respondent *Held*, that on the true construction of the stipulation as to " passing " it must have been contemplated that there was some standard with which those sleepers should be compared, which at the lowest must have been the standard set up expressly or impliedly by the contract between the parties, which was the specification or at least the requirement that the sleepers were reasonably fit, as sleepers of the dimensions described, for use by the Madras Railway Company so that the right conferred upon the appellants by the stipulation amounted merely to the right to determine by and through the skilled and experienced persons whom they should necessarily employ for the purpose, acting honestly and impartially according to the best of their judgment whether the goods supplied were in conformity with the requirements of the contract under which they were so supplied. The real defence therefore rested upon the alleged fact that the sleepers were " passed " by the two expert persons employed for the purpose in the impartial exercise of their judgment They may have acted honestly, as the first Court thought they did; but the evidence showed that they never approached the question they had to determine, namely, the conformity of the sleepers supplied with the contract under which they were supplied They merely determined that the sleepers were fit to be sent out as the manufacture of their employers; and there was not therefore any " passing " of the sleepers within the meaning of the contract. BOMBAY-BURMAH TRADING CORPORATION, LIMITED *v.* AGA MAHOMED KHALEEL SHIRAZI (1911) **I. L. R. 34 Mad. 453**

CONTRACT ACT (IX OF 1872).

——— ss. 10, 11—*Guardian and minor—Sale of his own property by guardian to minor—Sale valid if for benefit of minor.* A certificated guardian transferred some immoveable property belonging to himself to his minor wards in satisfaction of money which he owed to them. After the guardian's death the minors sued his heirs for possession of the property. *Held*, on the finding, that the transaction was *bonâ fide* and for the benefit of the minors, that the transfer in their favour was valid and could be enforced by them as against the heirs of their late guardian. ULFAT RAI *v* GAURI SHANKAR (1911) . . . **I. L. R. 33 All. 657**

——— s. 18, cl. (3)—*Civil Procedure Code (Act V of 1908), O. XXI, r. 91—Stamp Act (II of 1899), s. 35—Court-sale—Discovery that the judgment-debtor had no saleable interest—Failure of consideration—Suit by auction-purchaser for possession or return of purchase-money—Relations of the judgment-creditor and the auction-purchaser—Suit not cognizable by Small Causes Court—Unstamped document regarded as non-existent.* A Court-sale purchaser having discovered that the judgment-debtors had no saleable interest in the property sold brought a suit against the judgment-creditor for recovery of possession of the property,

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 18—*concld*

or in the alternative, return of the purchase money on the footing of total failure of consideration. A question having arisen as to whether the suit was maintainable—*Held*, that the suit was maintainable, inasmuch as under the Civil Procedure Code (Act V of 1908) there was an implied warranty of some saleable interest when the right, title and interest of a judgment-debtor was put up for sale, and the purchaser's right based on such implied warranty to a return under certain conditions of the purchase money which had been received by the judgment-creditor was recognized The relations of the parties, namely, the judgment-creditor and the Court-sale purchaser were in the nature of contract. *Held*, further, that such a suit, though the subject-matter was less than R500, was not cognizable by a Court of Small Causes, there being a prayer for possession of immoveable property. An unstamped document being inadmissible in evidence must be taken as non-existent. RUSTOMJI ARDESHIR IRANI *v.* VINAYAK GANGADHAR BHAT (1910) . **I. L. R. 35 Bom. 29**

——— 23.

See MARRIAGE . **15 C. W. N. 447**

——— s. 30—*Contract collateral to a wagering contract not unenforceable* Where an agent has incurred losses on behalf of his principal he is not disentitled to recover as against the principal by reason of the contract in respect of which such losses were incurred being a wagering contract. *Shibbo Mal* v *Lachman Das, I. L. R. 23 All. 165*, followed. *Thacker* v. *Hardy, I. L. R. 4 Q. B. D. 685*, referred to. JAGAT NARAIN *v* SRI KISHAN DAS (1910) . . . **I. L. R. 33 All. 219**

——— s. 43.

See CO-SHARER . **15 C. W. N. 332**

——— ss. 43, 68, 69, 70, 72, 146, 222.

See CONTRIBUTION . **I. L. R. 38 Calc. 1**

——— ss. 59, 60.

See SALE FOR ARREARS OF REVENUE. **I. L. R. 38 Calc. 537**

——— s. 63—*Release conditional on a future event valid—Evidence Act, s. 95—Evidence aliunde admissible to prove claim released.* It was not the intention of the Legislature in enacting s. 63 of the Contract Act to depart from the English law, under which releases contingent on the happening of a future event are valid. Such releases are valid under the Contract Act. Unlike the English law requires consideration in the case of releases not under seal, the Contract Act requires no consideration in the case of releases. When a deed of release is silent as to the claim released, evidence *aliunde* is admissible under s. 95 of the Evidence Act to show what claim was intended to be released. MATHEW HENRY ABRAHAM *v.* THE LODGE " GOOD WILL " No. 465, BELLARY (1910) **I. L. R. 34 Mad. 156**

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 65—*Void agreement, party to, if must restore and advantage gained under it—Indian Evidence Act (I of 1872), s. 92—Oral evidence to show the real transaction evidenced by document, if admissible.* Where the plaintiff claimed the consideration money mentioned in a *kobala* and the defendant pleaded that the real consideration for the *kobala* was the service rendered to the plaintiff in inducing a third person to sell a certain property to the plaintiff and that there was no contract for payment of money: *Held*, that oral evidence to show the real nature of the transaction was rightly admitted S. 65 of the Contract Act does not apply when the object of the agreement is illegal to the knowledge of both parties at the time when it was made Where a *kobala* was executed mainly in consideration of the services rendered by the defendant in inducing his employer to sell a property to the plaintiff and was thus void, the contract could not be regarded as having been "discovered to be void," or "become void" within the meaning of s. 65 of the Contract Act. *Held*, further, that in the circumstances of the case both the parties being in *pari delicto*, no relief should be granted. NATHU KHAN *v.* SEWAK KOERI (1911) . . . **15 C. W. N. 408**

——— s. 69.

See PATNI REGULATION, s. 13, CL. 4
15 C. W. N. 404

——— ss. 69, 70.

See CO-SHARER . **15 C. W. N. 332**

——— ss. 70, 222.

See LIMITATION ACT, 1877, SCH II, ARTS. 61, 63, 116, 120 **I. L. R. 34 Mad. 167**

——— s. 108.

See VENDOR AND SUB-VENDOR.
I. L. R. 38 Calc. 127

——— ss. 208, 209—*Suit to recover money—Acknowledgment by defendant's gumasta (agent) after his death—Death of the defendant not known to plaintiff—Limitation Act (XV of 1877), s. 19.* Plaintiffs' firm had dealings with one Haji Usman from the 5th January 1901 till the 25th October 1903 Haji Usman's business managed by a *gumasta* (agent). Haji Usman died in or about March 1903, and the plaintiffs had no knowledge of his death On the 2nd June 1903 the *gumasta* wrote to the plaintiffs a postcard stating, "you mention that there are moneys due; as to that I admit whatever may be found on proper accounts to be owing by me; you need not entertain any anxiety." On the 30th May 1906 the plaintiffs brought a suit against the managers of Haji Usman's estate to recover a certain sum of money on an account stated. The defendants pleaded the bar of limitation on the ground that there was no acknowledgment of the debt by a competent person. *Held*, that the suit was not time-barred. The *gumasta's* letter of the

CONTRACT ACT (IX OF 1872)—*concld.*

——— ss. 208, 209—*concld.*

2nd June 1903 was an acknowledgment within the meaning of s. 19 of the Limitation Act (XV of 1877). The case fell within the provisions of ss 208 and 209 of the Contract Act (IX of 1872). The termination of the *gumasta's* authority, if it did terminate, did not take place before the 2nd June 1903 as the plaintiffs did not know of the principal's death, and the *gumasta* was bound under s. 209 to take, on behalf of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him. EBRAHIM HAJI YAKUB *v.* CHUNILAL LALCHAND (1911)
I. L. R. 35 Bom. 302

——— ss. 231, 232

See IMMOVEABLE PROPERTY.
I. L. R. 34 Mad. 143

CONTRACT OF CARRIAGE.

See COMMON CARRIER, LIABILITIES OF
I. L. R. 38 Calc. 28

CONTRACT OF SERVICE.

See SECRETARY OF STATE FOR INDIA
I. L. R. 38 Calc. 378

See WORKMEN'S BREACHES OF CONTRACT ACT, SS. 1, 2, 4 . **15 C. W. N. 15**

CONTRIBUTION.

See CO-SHARER . **15 C. W. N. 332**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 82 . **I. L. R. 33 All. 387**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 82 AND 100
I. L. R. 33 All. 708

——— *Deposit under s. 310A, Civil Procedure Code, by co-tenant, not a party to decree for sale for arrears of rent—Decree, satisfaction of, how becomes complete—Contract Act (IX of 1872), ss 70, 43, 68, 69, 72, 146, 222—Civil Procedure Code (XIV of 1882), s. 310A.* Where an entire tenure was sold in execution of rent-decrees obtained against only some of the tenants, and a tenant, who was not a party to the rent suit, deposited, with the approval of the Court and lawfully, the prescribed amounts under s. 310A of the Code of Civil Procedure to have the sales set aside, with the object of protecting his own interest in the holding, and the sales were set aside, with the result that the liability of the defendants in respect of rent was discharged:—*Held*, that the plaintiff was entitled to sue the several defendants for contribution, each according to his share in the decretal debt only, but not in respect of the deposit of 5 per cent of the purchase-money that the applicant is bound to make under s. 310A, Civil Procedure Code. *Per* JENKINS, *C.J.*—The terms of s 70 of the Contract Act apply to such a case, and, though they are rather wide, they enable the Courts to do substantial justice in cases where it would be difficult to impute to the persons concerned relations

CONTRIBUTION—*concld.*

actually created by contract. But it is incumbent on final Courts of fact to be guarded and circumspect in their conclusions, and not to countenance acts or payments that are really officious *Venkata Gopalarayu* v *Timmayya Pantulu, I. L R. 22 Mad. 314*, referred to. *Per* Doss, *J* Such a case does not come within the purview of s. 70 of the Contract Act, for the plaintiff must in law be held to have deposited the rent in Court in discharge of his own liability, and not in satisfaction of a debt due by another, co-sharer tenants being liable for the rent, not only jointly, but also severally. It was not the intention of the Legislature that s. 70 should be invoked where relief might be obtained under any other section of the Act, *e g*, ss 43, 68, 69, 72, 146 or 222. S. 69 is applicable in cases like this. *Smith* v. *Dinonath Mookerjee, I. L. R. 12 Calc. 213*, discussed *Damodara Mudaliar* v. *Secretary of State for India, I. L R 18 Mad. 88*, approved of. Though the plaintiff had no right to make the deposits under s 310A, Civil Procedure Code, as *his* interest in the holding was not affected by the sales, he being no party to the decrees, the deposits being in fact made without protest from any party or Court, and the joint obligation of all tenants discharged thereby, the mere fact that the money was deposited under s. 310A did not place him in a position worse than if he had satisfied the entire decree before sale, nor did it alter the equitable right of the plaintiff to be reimbursed proportionately for the deposit, the benefit of which was enjoyed by others *Fatima Khatoon Chowdrain* v. *Mahomed Jan Chowdry, 12 Moo I. A 65 10 W. R. P. C. 29, Dulichand* v. *Ramkishen Singh, I. L. R. 7 Calc. 648 L R. 8. I. A 93. Johnson* v *Royal Mail Steam Packet Co, L. R 3 C. P. 38, Edmunds* v. *Wallingford, L. R. 14 Q. B. D. 811, The Orchis, L. R. 15 P. D. 38, Jugdeo Narain Singh* v. *Raja Singh, I. L. R. 15 Calc. 356*, referred to. In apportioning liability between co-obligees in a suit for contribution, which is eminently an equitable suit, regard must be had more to the real nature of the debt than to the decree founded on it. *Ram Tuhul Singh* v *Biseswar Lall Sahoo, L. R. 2 I. A. 191. 23 W. R. 305, Ruabon Steamship Co.* v. *The London Assurance, [1900] A C 6*, referred to. A decree is not satisfied and the obligation in respect of it is not discharged until the decree-holder receives the money out of Court and satisfaction of the decree is entered; nor does the compulsion of law initiated by the attachment of the property terminate until such satisfaction. SUCHAND GHOSAL *v.* BALARAM MARDANA (1910) I. L. R 38 Calc. 1

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE I. L. R. 35 Bom. 478

See PENAL CODE, s. 280. 15 C. W. N. 835

CONVERSION.

——— of Mahomedan to Christianity—

See MARRIAGE . I. L. R. 33 All. 90

CONVERT.

See JURISDICTION. I. L. R. 35 Bom. 264

——— to Christianity—

See SUCCESSION ACT, s. 2. 15 C. W. N. 158

CONVICTION.

——— alteration of—

See APPELLATE COURT. I. L. R. 38 Calc. 293

CO-OWNERS.

——— rights of, inter se—

See LANDLORD AND TENANT. I. L. R. 33 All. 308

COPY.

——— *Specific Relief Act (I of 1887), s. 45—Jurisdiction of High Court to direct copy of Presidency Magistrate's notes of deposition to be furnished to a party to a criminal case.* A party to a criminal proceedings is entitled to copies of the Presidency Magistrate's notes of depositions. BENI MADHUB BANERJEE *v.* SAILENDRA NATH MUKERJEE (1911) . . 15 C. W. N. 770

COPYRIGHT.

See COPYRIGHT ACT (XX OF 1847), ss. 7, 12 . . I. L. R. 33 All. 24

COPYRIGHT ACT (XX OF 1847).

——— ss. 7 and 12—*Copyright—Suit for damages for infringement of copyright—Jurisdiction.* A suit to recover damages for infringement of copyright does not lie in the Court within the jurisdiction of which the plaintiff, but not the defendant, resides. Neither is the possessor of a pirated copy of a copyright work bound to deliver it to the owner of the copyright whenever he (the owner) may happen to reside. RAM KISHAN *v.* PIARI LAL (1910) . . . . I. L. R. 33 All. 24

CORROBORATION.

See ACCOMPLICE I. L. R. 38 Calc. 559

——— necessity of—

See ACCOMPLICE . I. L. R. 38 Calc. 96

CO-SHARER.

See BENGAL TENANCY ACT, s. 171. 15 C. W. N. 512; 782

See BENGAL TENANCY ACT, s. 188. 15 C. W. N. 74

See PARTITION . 15 C. W. N. 375

See PARTITION ACT (IV OF 1893). 15 C. W. N. 552; 555 (foot note)

——— suit by—

See BENGAL TENANCY ACT, s. 188. I. L. R. 38 Calc. 270

1. ——— Injunction—*Co-sharer, exclusive enjoyment of portion of property by—Injunction,*

CO-SHARER—*concld*

if may be granted where no injury to other co-sharers found. Where a co-sharer had taken possession of a small plot of unoccupied land and had erected a tinshed thereon and it was found that by such exclusive possession his other co-sharers had not suffered any substantial injury: *Held*, that no mandatory injunction should be issued requiring him to restore the land to its original condition. *Watson & Co* v. *Ram Chand Dutt, L. R 17 I. A. 110 s c. I. L R 18 Calc 10, Dilbar Sardar* v. *Hosein Ali Bepari, I. L R 26 Calc 553, Atarjan Bibee* v. *Sheikh Ashak, 4 C W N. 788, Lachmyswar Singh* v *Manowar Hosein, I. L R. 19 Calc. 253*, referred to BRAHMOMOYI CHOWDHURANI *v* GOPI MOHAN ROY CHOWDHURI (1910) **15 C. W. N. 188**

2. ———— **Right to contribution**—*Contract Act (IX of 1872), ss 43, 69, 70—Rent paid by co-sharer in wrongful possession of entire jote—Payment in good faith—Deduction on account of mesne profits—Payment, whether gratuitous* Defendant's title to an eight annas share in a *jote* having been declared in a suit brought by him against the plaintiff, the latter sued the former for a moiety of the rent recovered from him by the landlord when he was in exclusive possession of the *jote*. *Held*, that in such cases the principle in *Dakhina Mohan* v. *Sarada Mohan, I. L. R. 4 Bom. 643*, applies, and the plaintiff would be entitled to recover if the payment was made by him in good faith, subject however to a deduction on account of mesne profits realised by him in respect of the defendant's share If the payment was made with a view to creating title in the entire *jote*, it could not have been made in good faith. It would be a voluntary payment and one not made "lawfully" within s. 70 of the Contract Act. *Desai Himat Singhji* v. *Bhavabhai, I. L R. 4 Bom 643, Bamasundari* v *Adhar Chandra, I. L. R 22 Calc 28, Tiluck Chand* v. *Saudamini, I. L R 4 Calc 566*, referred to. JINNAT ALI *v.* FATEH ALI MATBAR (1911) . . . . **15 C. W. N. 332**

COSTS.

See CIVIL PROCEDURE CODE, 1908, O XXV, R. 1 . . **I. L. R. 35 Bom. 421**

See CONTEMPT OF COURT. **15 C. W. N. 771**

See CRIMINAL PROCEDURE CODE, S. 148. **15 C. W. N. 811**

See DECREE . **I. L. R. 38 Calc. 125**

See OUDH ESTATES ACT (I OF 1869). **I. L. R 33 All. 344**

See PRACTICE . **I. L. R. 35 Bom. 339**

See SOLICITOR'S LIEN FOR COSTS. **I. L. R. 35 Bom. 352**

———— **of reaping crops**—

See CLAIM . . **15 C. W. N. 817**

CO-TENANTS.

See BENGAL TENANCY ACT, S. 171. **15 C. W. N. 782**

COUNSEL.

———— **telegram from**—

See BAIL ORDERS. **I. L. R. 38 Calc. 293**

COUNTER-CLAIMS.

———— *Counter-claims by defendant against plaintiffs individually—Original Side Rule No 47—English Supreme Court Rules, O. XIX, r. 3, construction of* Where two or more plaintiffs sue for a joint claim, a defendant may set up counter-claims against the plaintiffs individually. The Court has a discretion under rule 47 of the Original Side rules in such a case to decline to allow the counter-claims to be set up on the ground of inconvenience. RAMANADAN CHETTY *v* ABDUL KARIM SAHIB (1910) **I. L. R. 34 Mad. 226**

"COURT."

———— *Limitation Act (XV of 1877), s 14—Interpretation—Court in British India—Court in a Native State in India not included.* The word "Court" as used in s. 14 of the Indian Limitation Act (XV of 1877) means a Court in British India, and not a Court in a Native State of India. CHANMALAPA CHENBASAPA *v* ABDUL VAHAB (1910) . . . . **I. L. R. 35 Bom. 139**

COURT-FEE.

See COURT-FEES ACT.

See CIVIL PROCEDURE CODE, 1908, O. XXXIII, R. 13. **I. L. R. 35 Bom. 448**

———— **non-payment of**—

See RES JUDICATA. **I. L. R. 35 Bom. 38**

COURT-FEES ACT (VII OF 1870).

———— **ss. 5 and 7**—*Court-fee—Objections by mortgagee asking for sale of a portion of the mortgaged property exempted by the Court from sale—Reference by taxing Judge to a Division Bench—Jurisdiction. Held*, that where a party objects by way of appeal or under the provisions of O. XLI, r. 22, of the Code of Civil Procedure to a decree of a subordinate court excluding from liability a portion of certain property, the whole of which he claims to be liable for a mortgage debt, and while accepting the correctness of the amount found due asks that the excluded portion of the property may be also declared liable, court-fees should be paid with reference to the value of the property sought to be rendered liable. *Kesavarapu* v *Kotta Reddi, I. L. R. 30 Mad. 96*, followed. Where the Taxing Judge referred to a Division Bench a question relating to court-fees referred to him by the Taxing Officer: *Held*, that the Bench had no authority to entertain such reference. KACHERA *v.* KHARAG SINGH (1910) **I. L. R. 33 All. 20**

———— **s. 7, sub-s. (iv), cls. (c), (d).**

See JURISDICTION. **I. L. R. 35 Bom. 264**

COURT-FEES ACT (VII OF 1870)—*concld.*

——— s. 7, sub-s. (iv), cls. (*c*), (*d*).

See JURISDICTION . 15 C. W. N. 823

——— s 7, cl. V. (*b*)—Appeal—*Court-fee—Suit for possession—Decree for qualified possession—Appeal seeking to remove the qualification contained in the decree* Plaintiff brought a claim for possession of certain property as transferee from a Musammat Gomi, to whom the property had been bequeathed by one Musammat Gomti Kunwar, who had acquired it under a will executed by her husband The court of first instance granted him a decree for possession, but limited to the life-time of Musammat Gomi The defendant appealed, and the plaintiff also appealed, seeking to have this condition removed from the decree, and paid a court-fee of R10 on his memorandum of appeal *Held*, that the court-fee was sufficient, the plaintiff appellant being in the position of a person in possession of property who sought to clear his title and to obtain a declaration that he had the full right of ownership to the property RUP CHAND *v.* FATEH CHAND (1911) . . . I. L. R. 33 All. 705

——— s. 7, cl. V (*d*)—Suit to recover a two-third share in certain specific plots sold—*Court-fee—Court-fee payable on market value.* Where a Hindu widow possessed of certain zamindari property of the total area of 17 bighas 6 biswas, assessed to a revenue of R19-7-0, sold 11 bighas and 11 biswas out of the same, which was practically two-thirds of what she possessed, and specified the actual plots sold: *Held*, in a suit by two out of three reversioners to recover two-thirds of the property thus alienated, that, the claim being for specified plots and not a definite share of the whole estate paying revenue, the court-fee should be paid on the market value of the property in suit and not on five times the Government revenue. CHANDHAN *v.* BISHAN SINGH (1911) I. L. R. 33 All. 630

——— ss 7, 11.

See SECOND APPEAL . 15 C. W. N. 454

——— Sch. II. Art. 17 (*6*)—Suit for restitution of conjugal rights—*Court-fee Held*, that the court-fee payable in respect of a suit for restitution of conjugal rights is a fee of ten rupees under art 17, cl. VI, of the second schedule to the Court Fees Act, 1870 *Zair Husain Khan* v. *Khurshed Jan, I L. R 28 All 545*, referred to. AISHA *v.* FAIYAZ HUSAIN (1911) I. L. R. 33 All. 767

COURT OF WARDS.

See COURT OF WARDS ACT (III OF 1899), SS 16, 19 AND 49 I. L. R. 33 All. 791

See SPECIFIC RELIEF ACT, SS. 45, 46 15 C. W. N. 503

COURT OF WARDS ACT (III OF 1899).

——— ss. 16, 19, 49—*Decree on contract made while debtor was a ward of Court—Collector not made a party—Execution of decree* C obtained a decree for money against M based upon a contract entered into by the latter after he had become a ward of the Court of Wards. In execution of the decree certain moveable property belonging to M was attached Upon objection taken that a certificate that the claim was notified under s. 16 of the Court of Wards Act, 1899, should be obtained from the Collector, *held*, that the decree was bad, inasmuch as the suit and proceedings in execution were a fraud upon the court, and that as soon as it was brought to the notice of the court that the judgment-debtor was a ward of court, the court should have of its own motion then and there made the Collector a party and waited for such defence as the Collector might put forward. MUAZZAM ALI SHAH *v* CHUNNI LAL (1911) . I. L. R. 33 All. 791

COURT OF WARDS ACT (III OF 1899)—*concld.*

——— ss. 16, 19, 49—*concld.*

COURT-SALE.

See CIVIL PROCEDURE CODES, 1822, s. 317; 1908, s 66 . I. L. R. 35 Bom. 342

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R 91. I. L. R. 35 Bom. 29

See MORTGAGE . I. L. R. 38 Calc. 923

COVENANT.

See MORTGAGE. I. L. R. 35 Bom. 327; 371

——— Covenant to re-purchase purely personal—*Sale with an option of re-purchase—Suit by vendor's grandson against the vendee's daughter-in-law.* A deed of sale with an option of re-purchase contained the following clause:—"I have given the land into your possession; if perhaps at any time I require back the land I will pay you the aforesaid R600 and any money you may have spent on bringing the land into good condition and purchase back the land." In a suit brought 35 years after execution of the deed by the grandson of the vendor against the daughter-in-law of the vendee to exercise the option of re-purchase:—*Held*, that the covenant to re-purchase was purely personal and the suit was not maintainable. GURUNATH BALAJI *v* YAMANAVA (1911) I. L. R. 35 Bom. 258

CREDITOR.

——— neglect of—

See STAKEHOLDER . I L. R. 35 Bom. 1

CRIMINAL BREACH OF TRUST.

See MISJOINDER. I. L. R. 38 Calc. 453

See PENAL CODE, S. 409. I. L R. 33 All. 36

CRIMINAL INTERCOURSE.

See MAINTENANCE. I. L. R. 34 Mad. 68

CRIMINAL MISAPPROPRIATION.

See PENAL CODE, s. 409.
I. L. R. 33 All. 249

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——— s. 4 (*m*)—Complaint—*Petition asking for Police warning if complaint—Petition before Magistrate making charges against accused and asking for an order on Police to warn accused, if complaint.* A petition in which the petitioner made certain allegations against a person and asked for an order on the Police to warn him is not a complaint in a criminal case and no sanction to prosecute the petitioner under s. 211, Indian Penal Code, for those allegations can be granted. PURNO CHANDRA GHOSH *v.* HURISH CHANDRA GHOSH (1911)
15 C. W. N. 1051

——— ss. 4 (*r*) 340.
See MUKHTEAR . I. L. R 38 Calc. 488

——— ss. 35 (3), 408 prov. (*c*).
See SEDITION . I. L R. 38 Calc. 214

——— s. 90, Sch. V, Form VII.
See WARRANT . I. L. R. 38 Calc. 789

——— ss. 94, 96, 192, 202.
See MAGISTRATE, POWER OF.
I. L. R. 38 Calc. 68

——— ss 94, 165.
See SEARCH WITHOUT WARRANT.
I. L. R. 38 Calc. 304

——— s. 103—*Evidence of search apart from search list—Evidence Act, I of 1872, s 91—"Matter required by law to be reduced to the form of a document."* When a search has been conducted under s. 103, Criminal Procedure Code, evidence can be given regarding the things seized in the course of the search and regarding the places in which they were found in addition to the evidence of the list which the law directs to be drawn up relating to the particulars of the property found The words in s. 91, Indian Evidence Act, I of 1872, "any matter required by law to be reduced to the form of a document" could not have been intended by the legislature to mean observations of physical facts which under the ordinary law has to be proved by the testimony in Court. SOLAI NAIK *v.* EMPEROR (1910) . . . I. L. R. 34 Mad. 349

——— s. 106—*Security to keep the peace—"Offence involving a breach of the peace"—Mischief by removing land-mark—Penal Code (Act XLV of 1860), s. 434. Held,* that an offence "involving a breach of the peace" mentioned in s. 106 of the Code of Criminal Procedure, does not mean only an offence which necessarily involves a breach of the peace or of which a breach of the peace forms an ingredient, but includes such an offence as in common knowledge is ordinarily or very probably the occasion of a breach of the peace,

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 106—*concld.*

as, for example, the removal of a land-mark, *Baidya Nath Majumdar* v. *Nibaran Chunder Gope, I. L R 30 Calc. 93, Arun Samanta* v. *Emperor, I L R 30 Calc. 366, Raj Narain Roy* v *Bhagabat Chunder Nandi, I L. R 35 Calc 315,* and *Muthiah Chetti* v *Emperor, I. L. R. 28 Mad 190,* dissented from. EMPEROR *v* MANIK RAI (1911)
I L. R. 33 All. 771

——— s. 106 (3)—*Security to keep the peace—Powers of appellate court not limited by jurisdiction of original court—Penal Code (Act XLV of 1860), ss. 71, 147, 149, 325—Separate sentences.* The power conferred upon an appellate court by clause (*3*) of s 106 of the Code of Criminal Procedure is not limited in any way by the powers exerciseable by the original court which tried the case. *Emperor* v *Bhausing Dhumalsingh, I. L R 33 Bom. 33,* followed. *Muthiah Chetti* v. *Emperor, I. L. R. 29 Mad. 190, Paramasiva Pillai* v *Emperor, I. L. R 30 Mad. 48, Dorasami Naidu* v, *Emperor, I. L R 30 Mad 182,* and *Emperor* v. *Momin Malita, I. L. R 35 Calc. 434,* dissented from. *Held,* also, that where in the course of a riot grievous hurt was committed the accused might be lawfully convicted of separate offences under ss. 147 and 325 read with 149 of the Indian Penal Code and sentenced separately for each offence. *Queen-Empress* v *Bisheshar, I L. R 9 All 645,* followed. EMPEROR *v* DHARAM DAS (1910) . . . I. L R. 33 All. 48

——— s. 107—*Security to keep the peace—Circumstances in which the performance of religious ceremonies may amount to a wrongful act likely to occasion a breach of the peace Held,* that persons who performed religious ceremonies in a place not set apart for the purpose and where no such ceremonies had been performed before, and who did so with the deliberate intention of triumphing over, insulting, and wounding the religious feeling of their neighbours, committed a wrongful act and one which might probably occasion a breach of the peace or disturb the public tranquillity within the meaning of s 107 of the Code of Criminal Procedure. EMPEROR *v.* MURLI SINGH (1911)
I. L. R. 33 All. 775

——— s. 110—*Evidence of general repute inadmissible to prove charge under s. 117.* Where a person is solely charged under s 110, cl. (*f*), Criminal Procedure Code, Act V of 1898, evidence of general repute is inadmissible to prove that he is a desperate and dangerous character. A provision of law which is an exception to the general rules of evidence must be only applied to the cases to which it is confined by the legislature No argument can therefore be deduced from the admissibility of evidence of general repute under s 117, Criminal Procedure Code. MUTHU PILLAI *v.* EMPEROR (1910)
I. L. R. 34 Mad. 255

——— s. 110 (*e*).
See SECURITY FOR GOOD BEHAVIOUR
I. L. R. 38 Calc. 156

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— ss. 119, 200, 437—*Security for good behaviour—Discharge by Magistrate—District Magistrate ordering fresh inquiry—Accused—Discharge—Interpretation.* A District Magistrate can, under s. 437 of the Criminal Procedure Code, 1898, order fresh inquiry into the case of a person "discharged" by a Subordinate Magistrate under s. 119 of the Code The phrase "any accused person" as used in s. 437 is not confined in its application to a person against whom a complaint has been made under s 200 of the Code It includes a person proceeded against under Chapter VIII of the Code. The term "discharged" is not defined in the Code, and there is no valid ground for departing in respect of it from the rule of construction that where in a Statute the same word is used in different sections it ought to be interpreted in the same sense throughout unless the context in any particular section plainly requires that it should be understood in a different sense. *Queen-Empress* v. *Mutasaddi Lal, I. L R 21 All 107; King-Emperor* v *Fyaz-ud-din, I L. R 24 All. 148;* and *Queen-Empress* v. *Mona Puna, I. L. R 16 Bom 661,* followed *Queen-Empress* v. *Iman Mondal. I. L R. 27 Calc. 662;* and *Value Tayi Ammal* v. *Chidambaravelu Pillai, I. L R 33 Mad 85,* not followed. *In re* BABA YESHWANT DESAI (1911)
I. L. R. 35 Bom. 401

——— s. 123—*Order to furnish security—Reference by Magistrate to Sessions Judge—Sessions Judge to go into merits of the case* In a proceeding under ss 110 and 118 of the Criminal Procedure Code, 1898, the Magistrate ordered the accused to be bound over for a period of three years and referred the case to the Sessions Judge under cl. (*3*) of s 123 of the Code. The latter confirmed the order without going into the merits of the case *Held,* that the words of cl. (*3*) of s 123 of the Criminal Procedure Code, 1898. were wide enough to give discretionary power to the Sessions Judge to deal with the case on the merits and pass such orders as the circumstances of the case might require. EMPEROR *v.* AMIR BALA (1911)
I. L. R. 35 Bom. 271

——— s. 125—*Security to keep the peace—Cancellation of bond—Power of Magistrate to send accused to jail.* Under s. 125 of the Code of Criminal Procedure a District Magistrate may cancel a bond for good behaviour, but he is not competent to send the person whose bond is so cancelled to jail. EMPEROR *v.* FAKHR-UD-DIN KHAN (1911)
I. L. R. 33 All. 624

——— s. 144.

See PROHIBITORY ORDER.
I. L. R. 38 Calc. 876

——— s. 145.

See DISPUTE CONCERNING LAND.
I. L. R. 38 Calc. 889

See OFFERINGS TO DEITY.
I. L. R. 38 Calc. 387

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 145—*concld.*

——— *Possession—Title, proof of—Evidence* Evidence of title is admissible in an inquiry under s. 145 of the Code of Criminal Procedure (Act V of 1898) to enable the Court to decide the question of actual possession, but proof of title is not proof of actual possession. PANAGANTI PARTHASARATHY NAYANIM *v.* PALLIKAPPU VENKATASAMI REDDY (1910)
I. L. R. 34 Mad. 138

——— s. 145 (*4*).

See DISPUTE RELATING TO LAND.
I. L. R. 38 Calc. 24

——— s. 145 (*5*), (*6*)—*Compromise of a proceeding under—Effect of.* Where in a proceeding under s 145, the parties compromised and filed a petition of compromise and the trying Magistrate made an order to the following effect: "The parties compromised and filed a petition of compromise. According to its terms the lands will be in the possession of both sides as stated in the petition." *Held,* that the order did not operate as an order under cl (*6*) of s 145, but it fell under cl (*5*) of s. 145. That as both parties came to Court and showed that no dispute likely to cause a breach of the peace existed inasmuch as they had compromised, the Magistrate was precluded from passing an order under cl (*6*). That the existence of this order did not bar a subsequent proceeding under s. 145 on a fresh dispute likely to cause a breach of the peace arising between the parties. SADHU BIWSAS *v.* MAHAMAD ALI BISWAS (1910) . **15 C. W. N. 568**

——— s 146—*Order under, effect on possession—Suit by one party against the other for declaration, if lies—Specific Relief Act (I of 1877), s. 42.* Where in a proceeding under s 145, Criminal Proceedure Code, between the plaintiff and the defendants, the Magistrate being unable to decide which party was in possession passed an order under s 146 of the Code, and appointed the Collector as Receiver to take possession of the land:—*Held,* that the plaintiff was justified in instituting a suit for declaration of title against the defendants and was not bound to ask for recovery of possession of the land The suit was therefore not bad under s 42 of the Specific Relief Act. ADMINISTRATOR-GENERAL OF BENGAL *v.* BHAGWAN CHANDRA RAY CHAUDRY (1911) **15 C. W. N. 758**

1. ——— s. 147—Jurisdiction—*Jurisdiction to pass order under s. 147 on a proceeding under s 133.* No order can be passed under s. 147, Criminal Procedure Code. on a proceeding taken under s. 133. ABDUL RAKMAN MIA *v.* SAFAR ALI (1910) . . . **15 C. W. N. 667**

2. ——— *Ferry, dispute as to possession of—Dispute referred to arbitration pending proceedings—Proceeding stayed—Failure of arbitration—Revival of proceeding without fresh proceeding—Jurisdiction.* Where proceedings which were started in respect of a disputed ferry in September

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 147—*concld.*

1908 were stayed owing to the dispute having been referred to the Commissioner of the Division for arbitration, but the arbitration having failed, the Magistrate on 24th May 1910 purported to revive the proceedings and called upon the parties to appear with evidence on 19th June 1910 :—*Held,* that the Magistrate acted without jurisdiction in reviving the proceeding merely because the arbitration proved ineffectual without being satisfied that there were at the time sufficient grounds for proceeding under the section and without drawing up fresh proceedings for that purpose Fresh proceedings should, if necessary, be drawn up on the basis of present circumstances and not on what existed in 1908 ; and it should not be assumed that the causes which existed in 1908 or 1909 still continue to exist When the dispute was referred to arbitration the trying Magistrate recorded an order "further proceedings are unnecessary and they are therefore stayed" *Held,* that the order was in terms one under s. 145 (5), Criminal Procedure Code and directly it was passed the Magistrate ceased to have jurisdiction notwithstanding that by mistake he omitted to withdraw an order of attachment previously passed by him KALANANDA SINGH *v.* RAMESHWAR SINGH (1910)

15 C. W. N. 271

——— s. 148—**Costs under, if may be assessed after order**—*High Court's power of revision as to the amount of costs awarded* An order for assessment of costs under s 148, Criminal Procedure Code, does not become illegal simply because it was not made at the time of pronouncing judgment in the proceeding under ss. 145, 146 or 147. Criminal Procedure Code The order will be good if it is made within a reasonable time while the same Magistrate who decided the proceeding is sitting and the parties are able to appear before him. *Benoda Sundari Chowdhurani* v *Kali Kristo Paul Chowdhry, I. L R. 22 Calc. 387, Queen-Empress* v. *Tomiruddi, I. L. R 24 Calc. 757,* referred to and explained. When costs allowed by the Magistrate fall within the scope of s 148, the High Court will not interfere on the ground that they are either excessive or deficient. BANSI SINGH *v.* SAYAD MOHAMED AKBAR ALI KHAN (1911)

15 C. W. N. 811

——— s. 154—*First information, if evidence.* First information is not evidence in the case. It is tendered by the Crown for such use as the defence may be able to make of it and to test the consistency of the prosecution evidence. ASFAR SHEIKH *v.* THE KING-EMPEROR (1910)

15 C. W. N. 198

——— s. 165—**General search**—*Private defence, right of, against police search* S 165, Criminal Procedure Code, does not authorise a general search by the police for stolen property in the house of an absconding offender. It speaks of a specific document or thing which may be the subject of summons or order under s. 94. *Ishwar Chundra Ghosal* v. *The Emperor, 12 C. W. N. 1016,* referred to. Where the police without a search warrant under s. 98, Criminal Procedure Code, entered the house of the accused and searched for stolen articles :—*Held,* that the search was illegal and the occupiers of the house who were also part-owners had the right of private defence against the searching officers. BAJRANGI GOPE *v.* EMPEROR (1910)

I. L. R. 38 Calc. 304 : 15 C. W. N. 343

——— ss 177, 242—*Bond to keep the Peace —Enquiry, sufficiency of.* A Magistrate proceeding under s 117. Criminal Procedure Code (Act V of 1898), as nearly as practicable in the same way as under s. 242 Criminal Procedure Code, must state to the accused the particulars of the matter against them and ask them if they can show cause why they should not be required to execute bonds — *Held,* that the question "are you willing to execute the bonds required or do you wish for further inquiry" answered by a statement that the accused would execute bonds is not a sufficient compliance with s 117. PALANIAPPA ASARY *v* EMPEROR (1910) . . **I. L. R. 34 Mad 139**

——— s. 188—*Effect of illegal arrest on trial of accused—Extradition.* Where a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The principle upon which English cases to this effect are based underlies also s. 188 of the Criminal Procedure Code (Act V of 1898). EMPEROR *v.* VINAYAK DAMODAR SAVARKAR (1910) . . . . **I. L. R. 35 Bom. 225**

——— ss. 188, 227—*Offence committed in Nepal territory—Certificate granted by Political Officer specifying a particular section of the Indian Penal Code—Trying Magistrate not debarred from convicting under another section if within the facts stated.* A certificate granted by a Political Officer under s. 188 of the Code of Criminal Procedure in respect of a certain set of facts will cover every charge which the facts disclosed in the proceedings will suffice to sustain. The certificate is granted on the allegation of certain facts which constitute the charge against the accused, and the trying Magistrate is not restricted to the section which is mentioned in the certificate, but at the utmost to the facts. EMPEROR *v.* KRISHNA NATH TIWARI (1911) . . . . **I. L. R. 33 All. 514**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 165—*concld.*

1. ——— s. 195—**Sanction against witness for forgery, if must be taken.** No sanction is necessary for the prosecution of any person who is not a party to the suit or proceeding for offences under s. 467 or abetment thereof. *Giridhari Marwari* v. *Emperor, 12 C. W. N. 822,* distinguished. DEBI LAL *v.* DHAJADHARI GASHAI (1911) . . . . **15 C. W. N. 565**

2. ——— **Jurisdiction**—*Sanction to prosecute—Subordination of Courts—Transfer of case*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 195—*concld.*

out of local jurisdiction, power to. A petition asking for sanction to prosecute for certain offences under s 195 (*b*) and (*c*), Criminal Procedure Code, Act V of 1898, should not be transferred to a Court to which the Court before which the petition for sanction was pending is not subordinate, as the sanction of such a Court would be ineffective The High Court cannot transfer a case under s 110, Criminal Procedure Code, to any Magistrate other than one within whose local jurisdiction the person is found against whom proceedings are instituted In the matter of the petition of *Amar Singh, I. L R 16 All. 9 Held*, that the same principle applies to s 195, Criminal Procedure Code EKAMBARASWARA IYER *v.* VEERABADRA THEVAN (1910) **I. L. R. 34 Mad. 186**

——— s. 195 (*6*).

See CIVIL PROCEDURE CODE, 1908, s. 115 **I. L. R. 33 All. 512**

——— ss. 202, 203.

See MALICIOUS PROSECUTION. **I. L. R. 38 Calc. 880**

——— s. 209—*Magistrate—Inquiry—The case not committed to the Court of Session for want of sufficient grounds—Appeal against the order—Order reversed by the Sessions Judge—Commitment when to be made—Discharge of accused.* When a Committing Magistrate finds that there is no evidence whatever or that the evidence tendered for the prosecution is totally unworthy of credit, it is his duty under s 209 of the Criminal Procedure Code (Act V of 1898) to discharge the accused. Where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session. *Emperor* v. *Ravji Hari Yelgaumkar, 9. Bom. L. R 225*, followed: *Queen-Empress* v. *Namdev Satvaji, I L R 11 Bom. 372*, distinguished; and *Lachman* v. *Juala, I L R. 5 All. 161*, approved. *In re* BAI PARVATI (1910) . . . **I. L. R. 35 Bom. 163**

——— s. 222 (*2*).

See PENAL CODE, s 409 **I. L. R. 33 All. 36**

——— s 235—*Charges—Misjoinder—Same transaction* The accused by means of personating a Police Officer obtained from *A* several sums of money on different occasions and on one occasion attempted to obtain another sum: *Held*, that the trial of the accused on a charge under s. 170, Indian Penal Code, and on three charges of extortion in respect of three sums and in the alternative on three charges of cheating in respect of those three sums and on a charge of an attempt at extortion in respect of another sum was not illegal by reason of misjoinder of charges as the offences charged were committed in the same transaction. *Queen-Empress* v. *Wazir Jan, I. L. R. 10 All. 58*, referred to and followed. JAGDISH KUMAR SINHA *v.* ATMA RAM (1911) . . . **15 C. W. N. 732**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 239.

See MISJOINDER **I. L. R. 38 Calc. 453**

——— ss. 247 and 403—*Autrefois Acquit—Acquittal under s 243 bars further proceedings.* Where a case was disposed of under s 247, Criminal Procedure Code, the complainant and accused both being absent, the order under s 247 operates as a bar to further proceedings The provision in s. 403, Criminal Procedure Code, that a fresh trial will not be barred unless the accused has in the first case been "tried" does not limit the effect of an order of acquittal under s 247, Criminal Procedure Code *In the matter of* GUGGILAPU PADDAYA OF PALAKOT (1910) . **I. L. R. 34 Mad. 253**

——— s. 250, prov. (*b*).

See COMPENSATION TO ACCUSED **I L. R. 38 Calc. 302**

——— ss 253, 369.

See REVIEW IN CRIMINAL CASES. **I L. R. 38 Calc. 828**

——— ss 408, 415—*Appeal—Sentence.* Where certain persons were tried by a Magistrate of the first class, convicted of an offence under s 325, Indian Penal Code, and sentenced to a day's imprisonment and a fine of fifty rupees.—*Held*, that the circumstances that the accused were in fact neither sent to jail nor actually imprisoned would not prevent their being entitled to appeal to the Sessions Judge. EMPEROR *v* ALAM (1911) **I L. R. 33 All. 510**

1. ——— s. 413—Concurrent sentences—*Two sentences of one month running concurrently—Appeal* Where the accused were convicted on two separate charges and senenced to one month's rigorous imprisonment on each of the charges by a first class Magistrate, the sentences to run concurrently:—*Held*, that an appeal lay to the Sessions Court. BEPIN BEHARY DEY *v* THE EMPEROR (1911) . . . **15 C. W. N. 734**

2. ——— Practice—Sentence—*Magistrate passing non-appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to decide it on merits* The Magistrate trying a case passed at first a non-appealable sentence on the accused, but at the request of the accused, made an addition to the sentence passed so as to make it appealable. When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. In revision:—*Held*, that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal; for though the Magistrate had no jurisdiction to alter the sentence once passed by him, yet for the purposes of the Sessions Judge's jurisdiction, so far as the appeal was concerned, that was the very mistake which he was called upon to correct by way of

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 413—*concld.*

appeal When the appeal was heard again by the Sessions Judge he struck out the addition made by the Magistrate in the sentence, and having done that, dismissed the appeal on the ground that the sentence appealed from was not appealable. In revision —*Held*, that when the Magistrate had passed a sentence beyond one month, an appeal lay to the Sessions Judge, under s 413 of the Criminal Procedure Code whether that sentence was passed legally or illegally *Held*, also, that the Sessions Judge being once seized of the appeal, the whole appeal became open to his Court, even on merits EMPEROR *v.* KESHAVLAL VIRCHAND (1911) I L. R. 35 Bom. 418

——— s. 421

See APPEAL . I. L. R. 38 Calc. 307

——— s. 423

See APPELLATE COURT I. L. R. 38 Calc. 293

——— s. 423 (*b*) (2)—*Alteration of finding under—Penal Code (Act XLV of 1860), s 325—Conviction under, may be altered to conviction under s 144—Appellate Court, power of* Under s. 423 (*b*) (2), Criminal Procedure Code, the Appellate Court may alter the finding maintaining the sentence and there is nothing to restrict the finding which may be altered to a finding of conviction. A conviction under s 325, Indian Penal Code, may be altered by the Appellate Court into a conviction under s. 147, Indian Penal Code, the sentence under s 325 being maintained *Abhi Misser* v. *Lakhmi Narain, I. L. R 27 Calc. 566*, distinguished. APPANNA *v* PITHANI MAHALAKSHMI (1910) I. L. R. 34 Mad. 545

——— ss. 423, 439 (*5*).

See JURISDICTION OF HIGH COURT. I. L. R 38 Calc. 786

——— s. 429.

See PRINTING PRESS, FORFEITURE OF. I. L R 38 Calc. 202

——— s. 435.

See BENGAL REGULATION VI OF 1825, S. 2 I. L. R. 33 All. 84

——— ss. 462 (3), 537—*European British subject—Jury—Jury not chosen by lot—Illegality. Held*, that the provisions of s 460 (3) of the Code of Criminal Procedure are imperative, and if there is no choosing of the jury by lot, as provided for by the section, the result is that the whole trial is vitiated. *Brojendro Lal* v. *King-Emperor, 7 C. W. N. 188*, referred to. EMPEROR *v.* BRADSHAW (1911) I. L R. 33 All. 385

——— s. 476

See LEGAL PRACTITIONERS ACT, S. 14. 15 C W. N. 269

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 476—*concld.*

1. ——— "Judicial proceeding"—"*Brought under the notice of the Court*"—*Decree on an award—Jurisdiction. Held*, that the words "brought under its notice," in s 476 of the Criminal Procedure Code, are wide enough to cover an offence which may have been committed in another *forum* and on some previous occasion *Held*, also, that a proceeding in which a Court is asked to pass a decree in accordance with an award made with reference to a pending suit cannot be said to be other than a "judicial proceeding" within the meaning of the same section. *Girwar Prasad* v. *King-Emperor, 6 A. L. J 392; Umrao Singh* v. *Hardeo, I L. R 29 All. 418*, and *Banke Bihari Lal* v. *Pokhe Ram, I L R. 23 All. 48*, referred to. EMPEROR *v* KAMTA PRASAD (1911) I. L. R. 33 All 396

2. ——— Witness producing forged receipt—*Prosecution ordered by successor of trying Judge without preliminary enquiry—Legality* The power to direct prosecution under s. 476, Criminal Procedure Code, is conferred on the Court and not on the individual judicial officer who fills the judicial office at the time of the original trial. A successor of the officer before whom the original trial took place is not bound to hold an independent investigation before making an order under s. 476, Criminal Procedure Code The holding of a preliminary inquiry in a proceeding under s. 476, Criminal Procedure Code, is discretionary and a person against whom an order for prosecution has been passed without such an enquiry cannot complain unless he has been prejudiced by the omission. *Shaikh Bahadur* v. *Eradutulla, 14 C. W. N 799*, explained and followed DURPA NARAYAN BERA *v* BEPIN BEHARY MITTER (1911) 15 C. W. N. 691

3. ——— *Witness producing forged receipt—Prosecution ordered by successor of judicial officer, without preliminary enquiry—Legality.* The power to direct prosecution under s. 476, Criminal Procedure Code, is conferred on the Court and not on the individual judicial officer who fills the judicial office at the time of the original trial. A successor of the officer before whom the original trial took place is not bound to hold an independent investigation before making an order under s. 476, Criminal Procedure Code. The holding of a preliminary inquiry in a proceeding under s. 476, Criminal Procedure Code, is discretionary and a person against whom an order for prosecution has been passed without such an enquiry cannot complain unless he has been prejudiced by the omission. *Shaikh Bahadur* v. *Eradutulla, 14 C. W. N. 799*, explained and followed. DURPA NARAYAN BERA *v.* BEPIN BEHARY MITTER (1911) 15 C W. N. 691

——— s. 491—Habeas Corpus, power of the High Court to issue writs of—*Grounds on which it may be issued—Habeas Corpus, right to, if may be taken away by Indian Legislature—Exclu-*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 491—*concld*

sion of right it must be express or by necessary implication—The Extradition Act (33 & 34 Vict., c 52) how far applicable to India—Indian Extradition Act (XV of 1903), ss. 3 and 4, sub-s (1), if excludes jurisdiction of High Court in Habeas Corpus—Extradition warrant issued after enquiry by Government if bar to High Court's entertaining application, Evidence Act (I of 1872), ss. 2, 78, 86—Foreign records, authentication of—Hearsay evidence admitted by foreign Court if admissible—Copy of document proved in foreign Court if admissible The jurisdiction of the High Court to give directions in the nature of Habeas Corpus under s 491 of the Criminal Procedure Code, is not excluded by the issue by the Government of India of a warrant under s 3, sub-s. 8 of the Extradition Act The Government can only issue a warrant by virtue of the provisions of the Legislature authorising it, and if those provisions have not been carried out, the warrant and the custody thereunder may be found to be illegal under s. 491, Criminal Procedure Code, though with the extradition proceedings themselves the High Court cannot, except as allowed by the Act, directly interfere. *Quære* Whether a supreme right like that to a Habeas Corpus can be taken away or limited by the Indian Legislature. *Held*, that if it can be so taken away it must be clearly shown that it has been expressly taken away *Per* MOOKERJEE, *J*—The burden lies heavily on those who assert it to show that it has been taken away by such implication as is absolutely necessary for the interpretation of the Statute *Levinger* v *The Queen, I R. 3 P C. 282, 289*, referred to But the High Court in such a proceeding would not weigh the evidence before the Magistrate. Where the Magistrate has jurisdiction it is sufficient that there is some evidence on which the Magistrate may reasonably act *In re Siletti, 87 L. T 332, 334, 71 L J K. B 935*, followed *Per* CURIAM The Evidence Act does not contain the whole law of evidence applicable to British India Where therefore the records of a German Court were not authenticated in accordance with the Indian Evidence Act but in the manner prescribed by the English Extradition Act which is applicable in this country, the records were admissible under it. *Quære* Whether hearsay evidence admitted in evidence in the proceedings in Germany is admissible in extradition proceedings in India When the original Bill which the prisoner was alleged to have obtained by cheating was put in and proved by witnesses at the enquiry in the German Court: *Held*, that a copy of the document sent as part of the authenticated depositions and papers was admissible in evidence. There may be cases where the production of the original may be necessary for an enquiry in India. *In re* STALLMAN (1911) **15 C. W. N. 1053**

——— s. 517—*Delivery of property under—Order of delivery of property on joint receipt—Validity of such order.* On the discharge of an accused person on a charge of theft of articles admittedly found in possession of that person, on the ground that the accused had a *bonâ fide* belief in a claim of right to their possession, that person cannot claim return of the articles under s. 517, Criminal Procedure Code, as a matter of course Under s 517, Criminal Procedure Code, even where a party is charged with theft and that charge is dismissed or the party is discharged, an order can be made for the delivery of the subject-matter of the alleged theft to some party other than the party in whose possession the property was found at the date of the alleged theft *Kuppammal* v. *Ramaswamy Udayan, Cri. Rn. C No. 477 of 1905*, (unreported) followed. Property, part of which is joint family property, and part the self-acquisition of an undivided member of the family, may rightly be handed by the Court to the manager of the undivided family and the undivided member on their joint receipt. *Chalakonda Alasani* v. *Chalakonda Ratnachalam, 2 Mad. H C 56*, distinguished. KANAGA SABAI *v.* EMPEROR (1910) . **I. L R. 34 Mad. 94**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 517—*concld.*

——— s. 520—*Magistrate—Order as to disposal of property—On appeal to the Sessions Court the order left untouched—Application to the District Magistrate to revise the order—Jurisdiction—Notice to the other side—Practice.* In trying a case of theft, a Magistrate of the First Class convicted the accused and passed an order disposing of the property produced before him The Sessions Court, on appeal, confirmed the conviction, but left untouched the order as to the disposal of property. An application was then made to the District Magistrate to raise the order; and he varied it without issuing notice to the other side:—*Held*, reversing the order, that the terms of s 520 of the Criminal Procedure Code did not give any jurisdiction to the District Magistrate to interfere, and that he could only interfere as a Court of Revision where there had been no appeal to the Sessions Court. *Held*, also, that the District Magistrate ought not to have disposed of the matter without giving notice to the other side *In re* LAXMAN RANGU RANGARI (1911) . **I. L. R. 35 Bom. 253**

——— s. 526—*Transfer—Riot—Cross cases before same court—Opinion expressed by court on evidence in one case no ground for considering it incompetent to try the other.* The fact that a court before which there are pending two cross cases of riot has, on the trial of the first case, expressed opinions to some extent unfavourable to the accused in the second case, is no good ground for holding that the court is incompetent to try the second case. *Asimmaddi* v. *Gobinda Baidya, 1 C. W. N. 426*, referred to. EMPEROR *v* HARGOBIND (1911) . . . **I. L R. 33 All. 583**

——— s. 565—*Indian Penal Code (Act XLV of 1860), s. 75—Whipping Act (IV of 1909), s 3—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order.* S 565 of the Criminal Procedure Code (Act

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— s. 565—*concld.*

V of 1898) must be strictly construed The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping. EMPEROR *v.* FULJI DITYA (1910) . I. L. R. 35 Bom. 137

CRIMINAL PROCEEDINGS, STAY OF.

——— Pendency of civil suit—*Letter alleged to be forged set up as a defence—Genuineness of letter a principal issue in the case—Subsequent institution of criminal proceedings for forgery in respect of the same.* Where after the institution of a civil suit on a promissory note the defendant was called upon to furnish security, and set up, as an answer, to the plaintiffs' claim, a letter which was alleged to bear a forged signature and in respect of which criminal proceedings under ss. 465 and 467 of the Penal Code were taken by one of the plaintiffs :—*Held*, that inasmuch as the letter was a necessary part of the defendant's case and the question of its genuineness a principal issue in the suit, the criminal proceedings ought to be stayed pending the decision in the civil suit. SHASHI BHUSHAN SEAL *v.* EMPEROR (1910) I. L. R. 38 Calc. 106

CRIMINAL REVISION.

——— *Practice—Jurisdiction of High Court—Rule issued on one or more of several grounds in a petition, and ultimately discharged—Fresh Rule on the grounds of the same petition.* When a rule has been granted on one or more of several grounds contained in a petition and is ultimately discharged, the High Court has no jurisdiction to issue a fresh rule, in the same case, on the other or some of the other grounds of the petition, which were considered on the first occasion unless permission was given to the party, at the time of the discharge of the first rule, to renew the application on the other grounds or some of them. *Rai Radha Gobind* v. *Gossain Mohendra Gir, 6 C. W. N. 340*, and *Bibhuty Mohan Roy* v. *Dasmoni Dassi, 10 C. L. J. 80*, referred to. JOYMANGAL PERSHAD NARAIN SINGH *v.* JHAGROO SAHU (1911) I. L. R. 38 Calc. 933

CRIMINAL TRESPASS.

——— *Mischief—Entry by a servant upon land in the possession of the Court of Wards and cutting bamboos thereon under the order of the owner—Penal Code (Act XLV of 1860), ss. 426, 747.* A servant of a proprietor who has voluntarily surrendered his estate to the Court of Wards does not commit criminal trespass or mischief by cutting or removing bamboos, etc., growing thereon, for the benefit of his master, under the circumstances of this case. PARMESWAR SINGH *v.* EMPEROR (1910) . I. L. R. 38 Calc. 180

CRITICISM OF ACTS OF GOVERNMENT.

See SEDITION . I. L. R. 38 Calc. 253

CROSS-DECREES.

See CIVIL PROCEDURE CODE, 1908. O. XXI, RR. 18, 19, 20. I. L. R 33 All. 240

CROSS-OBJECTION.

See CIVIL PROCEDURE CODE. 1908, O XLI, R. 2 . . 15 C. W. N. 205

CROSS-SUITS.

See ACCOUNT . 15 C. W. N. 930

CRUELTY.

See DIVORCE . I. L. R. 38 Calc. 907

CUSTOM.

See JEWISH LAW. I. L R. 38 Calc. 708

See JURISDICTION. I L. R 35 Bom. 264

See OCCUPANCY HOLDING 15 C. W. N. 752

See PRE-EMPTION . I. L. R. 33 All. 605

——— Evidence—Presumption—*Inference of existence of a custom from continued use of land for a particular purpose.* It is open to a Court to infer from long enjoyment not exercised by permission, stealth or force, the existence of a custom. If after considering the evidence the Court comes to the conclusion that an alleged custom is unreasonable or that the privilege is enjoyed as a result of permission given or that it is exercised by stealth or force, the Court is entitled to find against the custom. *Kuar Sen* v *Mamman, I L. R. 17 All. 87*, referred to SHADI LAL *v.* MUHAMMAD ISHAQ KHAN (1910) . I. L. R. 33 All. 257

CYPRES DOCTRINE.

See TRUSTEES AND MORTGAGEES' POWERS ACT, (XXVIII OF 1866), S. 43. I. L. R. 35 Bom. 380

D

DACOITY.

See SEARCH WITHOUT WARRANT. I. L. R. 38 Calc. 304

——— *Conviction for, if proper when less than five of the accused charged actually convicted—Charge of dacoity if sufficient notice of complicity with others not specified—Verdict of jury—Weight of evidence, High Court, if should discuss—Misdirection* Where 8 persons were each of them separately charged with dacoity, but the jury acquitted four of them but found the other our guilty, the evidence before them being that there were more than five persons concerned in the offence even if the four who were acquitted were not there: *Held*, that the charge as against each

DACOITY—*concld.*

of dacoity was sufficient notice to each of the accused that they were charged with four or more others and the conviction by the jury of dacoity would import a finding that there were four or more others engaged with each dacoit The mere fact that the evidence was not sufficient to convict four of the accused actually charged would not in any way affect the question of the number of persons engaged. It is not necessary that the charge should in such cases specify that other persons besides those convicted and acquitted took part in the dacoity or that they should be referred to in the charge. Although in this case the evidence was not perhaps such as would commend itself to minds professionally trained to weigh testimony, for the High Court to express any opinion on its weight would be to usurp the functions of the jury It had only to see that there had been no error of law in the proceedings and no misdirection to the jury RASHIDAZZAMAN *v* EMPEROR (1911) . . . **15 C. W. N. 434**

DAMAGES.

See COMMON CARRIER, LIABILITIES OF.
I. L. R 38 Calc. 28

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS 50, 54.
I. L. R. 35 Bom 492

See SURVEYS AND BOUNDARIES ACT, S 12
I. L. R. 34 Mad. 108

——— measure of—

See ACTIO PERSONALIS MORITUR CUM PERSONA . . **I. L. R. 35 Bom 12**

DAMDUPAT, RULE OF.

——— *Damdupat, application of the rule of—Mortgage—Assignment of mortgage—Transfer of Property Act (IV of 1882), s. 2 (d)* The fact that the person entitled to sue on a mortgage happens by assignment to be a Parsee cannot affect the (Hindu) mortgagor's right to claim the advantage of the rule of *damdupat*, if it existed when the mortgage was entered into It is not proper to infer that, because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act (IV of 1882) shall be deemed to affect any rule of Hindu Law, the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of *damdupat* The right of a mortgagee to sue for his principal and interest arising from a contract must be taken to be made subject to the usages and customs of the contracting parties. JEEWANBAI *v.* MANORDAS (1910)
I. L. R. 35 Bom. 199

DASTURAT.

See MALIKANA . **15 C. W. N. 1029**

DAUGHTERS.

——— marriage of—

See WILL . **I. L. R. 38 Calc. 327**

DAYABHAGA.

See HINDU LAW—INHERITANCE
I. L. R. 38 Calc. 603

DEBT.

See SUCCESSION CERTIFICATE
I. L. R. 38 Calc. 182

——— extinguishment of—

See MORTGAGE . **I. L. R. 38 Calc 342**

——— hypothecation of—

——— *Hypothecatee of debt has the right to sue for the debt hypothecated—Transfer of Property Act (IV of 1882), s 134* The holder of a charge on a debt due to his debtor is a transferee of an actionable claim and entitled to recover the debt from the transferor's debtor. S 134 of the Transfer of Property Act shows that the mortgagee is a transferee and entitled to sue in his own name for the recovery of the original debt Where the original creditor is added as a party, the chargeholder, though not entitled to the whole amount, may recover the amount RAMASAMI PILLAI *v* MUTHU CHETTI (1910)
I. L. R. 34 Mad. 53

DEBUTTER.

See HINDU LAW—ENDOWMENT
15 C. W. N. 126

DECLARATORY SUIT.

See JURISDICTION
I. L. R. 35 Bom 264

See WAKF . **I. L. R 33 All. 660**

See SATISH CHANDRA GIRI *v.* GOPAL CHANDRA RAI . **15 C. W N. 110**

DECREE.

See CIVIL PROCEDURE CODE, 1882, SS. 276, 295, 320, 325A
I. L. R. 35 Bom. 516

See CIVIL PROCEDURE CODE, 1882, SS. 282, 287 . **I L. R. 35 Bom. 275**

See CIVIL PROCEDURE CODE, 1908, S 144.
I L. R. 35 Bom. 255

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R 14. **I. L. R. 35 Bom. 248**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)
I. L. R. 35 Bom. 204

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 15B . **I. L. R. 35 Bom. 310**

——— by mutual consent—

See HUSBAND AND WIFE
I. L. R. 38 Calc. 629

——— knowledge of—

See SUBSTITUTED SERVICE.
I. L. R. 38 Calc. 394

——— transfer of, for execution—

See POLITICAL AGENT AT SIKKIM, COURT OF . . **I. I. R. 38 Calc. 859**

DECREE—*concld.*

——— transmission of, for execution—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S 48, AND SCH. I, O XXI
I. L. R. 35 Bom. 103

——— *Irregularity—Decree, not drawn up—Contents of decree—Costs—Practice* It is the duty of a Court to draw up a decree after a case has been decided, and the decree should show the costs incurred by the parties SAGAR CHANDRA MANDAL *v* DIGAMBAR MANDAL (1910)
I. L. R. 38 Calc. 125

DECREE FOR MONEY.

——— payment of—

See CIVIL PROCEDURE CODE, 1908, O XXI, R 1 . I L. R. 35 Bom. 35

DECREE FOR RENT.

See MORTGAGE . I. L R. 38 Calc. 923

DEED.

See EVIDENCE, ADMISSIBILITY OF
I. L R. 38 Calc. 892

DEFAMATION.

See MALICIOUS PROSECUTION.
I L. R. 38 Calc 880

——— suit for—

See CIVIL PROCEDURE CODE, 1908, O XXV, R. 1 . I. L. R. 35 Bom. 421

DEFAULT.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 15B, CL. (2)
I. L. R 35 Bom 190

See EXECUTION OF DECREE
I. L. R. 38 Calc. 482

See WAIVER . . 15 C. W. N. 10

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

1. ——— Wife of an agriculturist—*Status—Suit by mortgagee to recover possession—Prayer for payment of principal and interest at certain rate—Decree—Payment of principal and interest—Payment of interest at certain rate till the principal is doubled—Contractual relation not superseded by the decree—Redemption suit—Accounts.* Under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) the wife of an agriculturist cannot claim to be an agriculturist. A decree obtained by a mortgagee in the year 1867 to recover possession of the mortgaged property set out that the plaintiff (mortgagee) was suing for possession of the mortgaged land with a prayer that until possession should be delivered over, or until the mortgage money was paid off, interest should be awarded at the rate of 2 per cent. per mensem. The decree then ordered that the mortgagor "should pay to the plaintiff (mortgagee) R300 and interest, R27, in respect of his claim,

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd*

Until payment of the moneys, or until the principal is doubled, interest should be paid at the rate of 2 per cent per mensem from 30th July 1867; and until payment of the moneys the land mortgaged, which was asked for in the suit, should be handed over according to agreement And the defendant should redeem the land by paying the plaintiff's money" Subsequently the mortgagor having brought a suit for redemption and accounts it was contended that the plaintiff's right to have accounts taken from the mortgagee in possession was lost by reason of the aforesaid decree *Held*, that the terms of the decree did not deprive the mortgagor of a right to accounts. The decree did not supersede the contractual relation, but by putting the mortgagee into possession merely carried out the terms of the contract which for the rest it preserved and kept alive There was no foreclosure either in fact or in intention, and it was in his capacity as mortgagee entitled by the contract to possession that he was put into possession by the said decree RADHABAI *v* RAMCHANDRA VISHNU AND RAMCHANDRA VISHNU *v.* RADHABAI (1910) . . . . I. L. R. 35 Bom. 204

2 ——— Owner deprived of property by fraud—*Suit to recover, brought in the form of a redemption suit, if lies.* A suit which, although in form a suit for redemption, was really a suit to recover property of which the rightful owner had been deprived by fraud, was not one in which special relief could be granted under the Dekkhan Agriculturists' Relief Act BACHI *v.* BICKCHAND JOIMAL (1910) . 15 C. W. N. 297

——— s 2, expl. (6)—*Agriculturist, definition—Assignee of Government revenue, not an agriculturist* The income derived from tenants by an Inamdar which is to a certain extent attributable to the fact that he is the assignee of Government revenue and, therefore, does not have to pay over a portion of that income to Government but may keep it for himself, cannot be taken into consideration in estimating whether or not he earns his livelihood wholly or principally by agriculture, and, therefore, is not an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act (XVII of 1879). KASHINATH RAMCHANDRA *v.* VINAYAK GANGADHAR (1911)
I. L. R. 35 Bom. 266

——— s. 10A—*Redemption suit—Sale in reality a mortgage—Evidence of oral agreement varying the written document—Evidence Act (I of 1872), s 92, pro. I.* The plaintiff brought a redemption suit under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) alleging that the deed which he had executed to the defendant, though on its face a deed of sale, was in reality only a deed of mortgage, the defendant having promised at the time of the execution of the deed that he would allow redemption on payment of the money advanced. The defendant replied that the transaction was sale. The First Class Subordinate Judge of the Dharwar District to which section 10A of the Dekkhan Agriculturists' Relief Act (XVII

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

——— s. 10A—*concld.*

of 1879) was not extended found on the evidence that the deed passed by the plaintiff was not proved to be really a mortgage and dismissed the suit. The plaintiff appealed urging that the proper issue in the case was as to whether the sale-deed was not obtained or induced by the defendant by means of fraud or misrepresentation within the meaning of proviso I of s. 92 of the Evidence Act (I of 1872) and prayed for a remand. *Held*, confirming the decree, that the plaintiff sought to make a new case in appeal in so far as he endeavoured to base his case, not upon a separate oral agreement, but upon some fraud which would invite the application of proviso I of s. 92 of the Evidence Act (I of 1872) *Held*, further, that in the districts to which s 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not extended, it was not open to the Court to enter upon a defence which consisted of an allegation of an oral agreement varying the written contract. *Dagdu* v. *Nana, I L R 35 Bom. 93*, and *Sangya Malappa* v. *Ramappa, I L. R. 34 Bom 59*, followed. *Balkishen Das* v. *W. F. Legge, I. L R 22 All 149*, referred to. SOMANA BASAPPA *v* GADIGEYA KORNAYA (1910) . . **I. L. R. 35 Bom. 231**

——— s. 13, cl. (c)—

See STATUTE, CONSTRUCTION OF
I. L. R. 35 Bom. 307

1. ——— s. 15B—*Power to order payment by instalments—Decree—Award on arbitration out of Court.* A decree was passed in terms of an award, which was arrived at on arbitration out of Court. On proceedings being taken to execute the decree, the judgment-debtor applied to the Court for an order to make the decretal amount payable by instalments under s. 15B of the Dekkhan Agriculturists' Relief Act, 1879 : *Held*, that the Court had no power to make any order as to instalments under s. 15B of the Dekkhan Agriculturists' Relief Act, 1879, which did not apply, inasmuch as the application to file the award was not a suit of the description mentioned in s. 3, cl. (*y*), of the Act. *Mohan* v. *Tukaram, I L. R. 21 Bom 63*, and *Ghulam Jilani* v. *Muhammad Hassan, L R. 29 I. A. 58*, commented on GOVINDRAO NARHAR *v.* AMBALAL MOHANLAL (1911) **I. L. R. 35 Bom. 310**

2. ——— s. 15B, cl (2)—*Compromise—Decree in terms of the compromise—Application for decree—Terms of the compromise opposed to law—Public policy—Instalments—Default—Payment of whole sum.* A suit brought against an agriculturist-defendant to recover money by sale of mortgaged property was compromised on the terms that the defendant should pay the amount in equal annual instalments, and that on failure to pay any two instalments the plaintiff should be at liberty to realise the whole of the balance by sale of the entire mortgaged property through the Court. The compromise was brought before the Court

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concld.*

——— s. 15B—*concld*

with a view to obtain a decree in its terms. The defendant when examined by the court agreed to be bound by its terms which were explained to him. The Subordinate Judge, however, felt doubt as to the validity of the compromise ; and referred for opinion the following two questions to the High Court : (i) whether the compromise was lawful although it provided that in default of the payment of two instalments the plaintiff should realize the whole balance due by sale of the entire mortgaged property, such provision having been opposed to s 15B, cl. (2) of the Dekkhan Agriculturists' Relief Act, 1879 ; and (ii) whether the Court was bound to pass a decree on a compromise of this character. *Held*, that the term " that in default of payment of two instalments the whole mortgaged property shall be liable to sale " was contrary to the public policy as declared in s. 15B, cl. (2) of the Dekkhan Agriculturists' Relief Act, 1879 ; and that, therefore, it was not competent to the Court to pass a decree which would be in conflict with the statutory provision. *Held*, further, that the mere fact that the defendant though apprised of the terms of the compromise agreed to it, did not invest the Court with jurisdiction to pass a decree to carry out the compromise. KISHANDAS SHIVRAM MARWADI *v.* NAMA RAMA VIR (1910) . **I. L. R. 35 Bom. 190**

DELAY IN MAKING PAYMENT.

——— caused by closing of Court—

See GENERAL CLAUSES ACT (X OF 1897), s. 10 . . **I. L. R. 35 Bom. 35**

DELIVERY ORDERS.

See VENDOR AND SUB-VENDEE.
I. L R. 38 Calc 127

DENIAL OF JUSTICE.

See DISPUTE RELATING TO LAND.
I. L. R. 38 Calc. 24

DEPOSIT.

See BENGAL TENANCY ACT, s. 53.
15 C. W. N. 760

——— by co-tenant, under s 310A, Civil Procedure Code, 1882—

See CONTRIBUTION . **I. L. R. 38 Calc. 1**

1. ——— Husband depositing money in wife's name in his shop—*Interest allowed over the amount—Depositee allowed to withdraw—Husband acknowledging trust—Creation of trust—Trusts Act (II of 1882), ss 5 and 6—Transfer of Property Act (IV of 1882), ss. 5, 54.* *D* made a credit entry of ₹20,000 in his books in the name of his wife *H* carrying interest at 4½ per cent. The entry was made on the 1st November 1891 as of the 30th November 1890. The amount of ₹20,000 was treated as belonging to *H* in the *sarvaya* (balance sheet) in the *samadaskat* book (account

DEPOSIT—*concld.*

book of deposits, etc) and in the *vyajavahi* (interest account book). In November 1895 *H*, on the occasion of her going on pilgrimage, withdrew some money from the account. *H* died on the 2nd March 1901. On the 29th July 1901 *D* wrote a letter to his four daughters by *H* saying that the money above referred to was given by him to *H* as a gift, that the four daughters had equal right to take the money, but that it was to be divided after his death. In February 1903 *D* debited the whole amount to *H*'s account and credited the same to the sons of *M*, one of the daughters of *D* and *H*. This he confirmed by his will which he made shortly afterwards wherein he stated that the money was always his own and never belonged to his wife *H*. After *D*'s death, which took place in March of the same year, the three remaining daughters of *D* and *H* sued to recover their share of the money :— *Held*, that the plaintiffs were entitled to recover their share in the amount. *Held*, by CHANDAVARKAR, J., that the circumstances proved showed that *D* intended a trust in favour of his wife *H*, and that that trust was carried into effect legally by him. *Held*, by HEATON, J., that there was no trust, but that, in the circumstances of the case, *D* conferred on *H* a right to the money though he did not actually give her money, and this right he by his own acts and words made perfect by those means which were appropriate to the purpose. BAI MAHAKORE *v.* BAI MANGLA (1911)
I. L. R. 35 Bom. 403

2. ——— Stakeholder—*Valid assignment by depositor to his creditor—Neglect of the creditor to recover—Creditor chargeable with the amount.* Where money deposited with a stakeholder was validly assigned by the depositor to his creditor in satisfaction of his debt and the creditor, being able to recover the amount so assigned, neglected to do so, he was chargeable with the amount. GANPATRAO BALKRISHNA BHIDE *v.* MAHARAJA MADHAVRAO SINDE (1910) . I. L. R. 35 Bom 1

DEPUTY COLLECTOR.

——— procedure by, under the Rent Recovery Act—

See JURISDICTION OF HIGH COURT.
I. L. R. 38 Calc. 832

DETECTIVE.

See ACCOMPLICE . I. L. R. 38 Calc. 96

DEVOLUTION, SCHEME OF.

See HINDU LAW—INHERITANCE.
I. L. R. 38 Calc. 603

DISBARMENT.

See MUKTEAR . I. L. R 38 Calc. 309

DISCHARGE.

See CONSPIRACY TO WAGE WAR
15 C. W. N. 593

——— effect of—

See CONSPIRACY TO WAGE WAR.
I. L. R. 38 Calc. 559

DISCOVERY.

——— right to—

See LAND ACQUISITION.
I. L. R. 38 Calc. 230

——— *Inspection—Affidavit of documents—Practice—Civil Procedure Code (Act V of 1908), O. XI, rr. 13, 18 (2).* The filing of an affidavit of documents under O. XI, r. 13 of the Civil Procedure Code, by one party, does not preclude the other party from subsequently applying under O. XI, r. 18, para. (2), for further discovery and inspection. BASANTA COOMAR GOSWAMI *v.* KUMUDINI DASEE (1911)
I. L. R. 38 Calc. 428

DISCRETION OF COURT.

See CIVIL PROCEDURE CODE, 1908, O. XXV, R. 1 . I. L. R. 35 Bom. 421

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S 25.
I. L. R. 35 Bom. 47

See SPECIFIC PERFORMANCE.
I. L. R. 38 Calc. 805

DISMISSAL.

See WRONGFUL DISMISSAL.

DISMISSAL FOR DEFAULT.

See CIVIL PROCEDURE CODE, 1882, SS. 10, 102 AND 103. I. L. R. 33 All. 560

See CIVIL PROCEDURE CODE (1908), O. XVII, R. 3 ; O. XLI, R. 27.
I. L. R. 33 All. 690

DISMISSAL FROM ROLLS.

See MUKTEAR . I. L. R. 38 Calc. 309

DISMISSAL OF SUIT.

See RES JUDICATA. I. L. R. 35 Bom. 38

DISPOSSESSION.

See LIMITATION ACT (XV OF 1887), SCH. II, ARTS. 142, 144
I. L. R. 35 Bom. 79

See SPECIFIC RELIEF ACT, S. 9.
15 C W. N. 294; 715

DISPUTE CONCERNING IMMOVEABLE PROPERTY.

See OFFERINGS TO DEITY.
I L. R. 38 Calc. 387

1. ——— Joint estate—*Dispute concerning land—Joint-owners—Claim of exclusive possession to subject of dispute, by each party—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898), s. 145.* A dispute between two sets of joint-owners, each claiming exclusive possession of the land forming part of the joint estate, through their respective tenants, is within the scope of s. 145 of the Criminal Procedure Code. An order declaring the exclusive possession of a tenant of one

DISPUTE CONCERNING IMMOVEABLE PROPERTY—*concld*

party is not, therefore, without jurisdiction *Makhan Lal Roy* v. *Barada Kanta Roy, 11 C. W N. 512*, distinguished. GURU DAS KUNDU CHOWDHRY *v.* KEDAR NATH KUNDU CHOWDHRY (1911)
I L. R. 38 Calc. 889

2. ——— **Duty of Magistrate to summon or compel the attendance of witnesses at the instance of the parties**—*Dispute relating to land—Witnesses—Failure of witnesses summoned to attend—Denial of justice—Interference by High Court—Criminal Procedure (Act V of 1898), s. 145 (4).* S 145 of the Criminal Procedure Code does not render it obligatory on the Magistiate to summon witnesses at the instance of he parties, or to compel their attendance after they have been summoned but failed to appear *Tarapada Biswas* v. *Nurul Huq, I. L. R 32 Calc 1093*, followed. Where a Magistrate has acted in accordance with law, it would be necessary to show the High Court very clearly, in order to warrant its interference, that the procedure adopted, though right in law, has in fact amounted to an absolute denial of justice. Where it did not appear what evidence the absent witnesses would be able to give regarding the question of actual possession, and there was nothing to show what efforts the party had made to procure their attendance, the High Court refused to interfere HARENDRA KUMAR BOSE *v.* GIRISH CHANDRA MITRA (1910)
I. L. R. 38 Calc 24

DISTRICT MAGISTRATE.

——— **powers of**—

See CRIMINAL PROCEDURE CODE, S 520.
I. L. R. 35 Bom. 253

DISTRICT MAGISTRATE, BANGALORE.

——— *District Magistrate, Civil and Military Station, Bangalore—Power of, to try European British subjects.* Proviso 4 to Notification 1688 I.A., Government of India, dated 4th October 1898, does not deprive the District Magistrate for the Civil and Military Station of Bangalore of jurisdiction to take cognizance of offences committed by European British subjects within the station PUBLIC PROSECUTOR, BANGALORE *v.* PRIVATE J. MARCHANT (1911)
I. L. R. 34 Mad. 346

DISTRICT MUNICIPAL ACT (BOM. III OF 1901).

——— **ss. 3 (7), 96**—*Notice of new buildings—Reconstructing side wall of a house on its old foundation not necessarily new building—Building, interpretation of.* The accused owned a house, one of the side walls of which had fallen down. He rebuilt it on its old foundation, without having previously obtained permission of the Municipality. He was thereupon charged, under s. 96 of the Bombay District Municipal Act (Bom Act III of 1901), for having erected a building without permission of the Municipality : *Held*, that the accused committed no offence under s 96, for it could not be said as a matter of law that the material reconstruction of a small wall must constitute the "erection of a building." *Emperor* v. *Kalekhan Sardarkhan, I L R 35 Bom. 236*, distinguished. *Per Curiam* It is recognized in England to be a rule with regard to the effect of interpretation-clauses of a comprehensive nature that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstances require that they should. *The Queen* v. *The Justices of Cambridgeshire, 7 Ad & E 480, Meux* v. *Jacobs, L. R 7 H. L. 481*, and *Mayor, &c. of Portsmouth* v. *Smith, L. R. 10 App. Cas. 364*, followed. EMPEROR *v* B. H. DESOUZA (1911) . . . . **I. L. R. 35 Bom. 412**

DISTRICT MUNICIPAL ACT (BOM. III OF 1901)—*contd.*

——— **ss. 3(7), 96**—*concld.*

——— **ss. 50, 54—Suit for damages against Municipality**—*Hubli Municipality—Reclamation of the bed of a tank for Municipal Cotton Market—Damage caused to plaintiffs' goods by sudden and extraordinary heavy rain—Burden of proof as to negligence in the reclamation work—Suit not maintainable—Vis major* The Hubli Municipality, a body corporate under the District Municipal Act (Bom Act III of 1901), took steps to provide a Municipal Cotton Market and they selected for that purpose a site of a large and ancient tank which had largely silted up The southern boundary of the tank was an embankment. In reclaiming the bed of the tank, the Municipality utilized a part of the embankment and made provision to prevent the flow of water In the month of June 1907, there was a sudden and extraordinary heavy rainfall at Hubli which practically overflooded the whole Municipal area and a quantity of goods in the plaintiffs' Ginning Factory which was to the south of the tank was washed away or damaged. Thereupon the plaintiffs brought a suit against the Municipality to recover damages alleging negligence on the part of the defendants in carrying out the reclamation work. The defendants denied the plaintiffs' allegation and answered that the damage to the plaintiffs' goods was the result of the abnormal heavy rain in June 1907 and that no precautions on the part of the defendants could have averted the damage. *Held*, that the suit was not maintainable. The onus of proof of negligence lay on the plaintiffs, and if the neglect in the execution of their statutory powers and duties was not brought home to the Municipality, a suit against them must fail as being unsustainable in law, howsoever great the damage the plaintiffs might have suffered from the extraordinary flooding uncontrolled by the old tank dam. *Per* RAO. *J.* :—The damage was mainly, if not wholly, attributable to the extraordinary fall of rain. It was an occurrence in the nature of *vis major* for which the defendants were not responsible.

DISTRICT MUNICIPAL ACT (BOM. III OF 1901)—*concld.*

——— **ss. 50, 54**—*concld*

MUNICIPALITY OF HUBLI *v* LUCUS EUSTRATIO RALLI (1911) . . **I. L. R. 35 Bom. 492**

——— **s. 96—Material reconstruction**—*Municipality—Permission of the Municipality—Building a wall which had fallen down—Absence of permission—Erecting a building* The accused applied to the Municipality on the 19th April 1910 for leave to reconstruct a wall of his house which had fallen down. Under sub-s 4 of s. 96 of the Bombay Municipal Act (Bombay Act III of 1901) the Municipality had one month within which to make known their decision, and on the 13th May they issued an order to the accused prohibiting him from making the reconstruction. In the meanwhile, on the 11th May, the accused reconstructed the wall He was, therefore, prosecuted under s 96 of the Act for having reconstructed the wall without the permission of the Municipality, but the Magistrate relying on the case of *Queen-Empress* v *Tippana, Ratanlal's Un. Cri Cas 402*, acquitted him. On appeal:—*Held*, reversing the order of acquittal, that the accused had erected a building within the meaning of s 96 of the Bombay District Municipal Act, 1901, since the rebuilding of the whole wall which had fallen down was a material reconstruction or an erection of a building as defined in the explanation to the section *Queen-Empress* v. *Tippana, Ratanlal's Un. Cri. Cas. 402*, is not an authority under the new Act. EMPEROR *v* KALEKHAN SARDARKHAN (1910) **I. L. R. 35 Bom. 236**

DIVISION BENCH OF HIGH COURT.

——— power of—

See REVIEW IN CRIMINAL CASES **I. L. R. 38 Calc 828**

DIVORCE.

See DIVORCE ACT.

See HUSBAND AND WIFE **I. L. R. 38 Calc. 629**

See JEWISH LAW **I. L. R. 38 Calc. 708**

——— *Wife's petition—Admission by respondent—Effect of husband's admission of adultery and cruelty, supported by confirmatory evidence* In a suit for dissolution of marriage, in the absence of collusion, an admission of guilt by one of the parties is cogent evidence which the Court will act on, especially if the admission is corroborated by other evidence *Robinson* v. *Robinson and Lane, 1 Sw & Tr. 362*, followed. ARNOLD *v* ARNOLD (1911) **I. L. R. 38 Calc. 907**

DIVORCE ACT (IV OF 1869).

——— **ss. 16, 17**—*Decree of dissolution of marriage—Recision of, by High Court—Withdrawal of petition on coming up for confirmation—English Procedure.* A decree of dissolution of marriage passed by a District Court under s. 14 of the Indian Divorce Act may be rescinded by the High Court at the request of the decree-holder when it comes up for confirmation under s. 17. The High Court has jurisdiction to rescind the decree of the District Court and allow the petition to be withdrawn. There is nothing in the Divorce Act which requires a distinction to be drawn between ss 16 and 17 with reference to the power of the Court to rescind a decree where the relations of husband and wife have been resumed before the decree has been confirmed The power "to make such order as to the Court seems fit" is not limited to cases where further enquiry has been ordered. The analogy of English procedure whereby on a petitioner withdrawing his petition the Court may set aside the decree *nisi* may be invoked in construing the Indian Divorce Act. WILLIAM DARE *v* BELLE DARE (1910) . . **I. L. R. 34 Mad. 339**

DIVORCE ACT (IV OF 1869)—*concld.*

——— **ss. 16, 17**—*concld*

Divorce Act may be rescinded by the High Court at the request of the decree-holder when it comes up for confirmation under s. 17. The High Court has jurisdiction to rescind the decree of the District Court and allow the petition to be withdrawn. There is nothing in the Divorce Act which requires a distinction to be drawn between ss 16 and 17 with reference to the power of the Court to rescind a decree where the relations of husband and wife have been resumed before the decree has been confirmed The power "to make such order as to the Court seems fit" is not limited to cases where further enquiry has been ordered. The analogy of English procedure whereby on a petitioner withdrawing his petition the Court may set aside the decree *nisi* may be invoked in construing the Indian Divorce Act. WILLIAM DARE *v* BELLE DARE (1910) . . **I. L. R. 34 Mad. 339**

——— **s. 23**—*Discretion of Court—Petitioner's adultery a ground for refusing a decree for judicial separation.* Where the petitioner (the wife) in a suit for divorce or in the alternative for a judicial separation was found to have herself committed adultery, to which the conduct of the respondent had in no way conduced, it was *held* that this was a good ground for the refusal of a decree for judicial separation. *Otway* v *Otway, L. R 13 P. D. 141*, followed *Constantinidi* v. *Constantinidi*, [*1903*] *P. D. 248*, distinguished. RHINE *v* RHINE (1911) **I. L. R. 33 All. 500**

DOCUMENT.

See EVIDENCE ACT, S 92, PRO 1. **I. L. R. 35 Bom. 231**

——— alteration of—

See FORGERY . **I. L. R. 38 Calc. 75**

DOCUMENTS OF TITLE.

See VENDOR AND SUB-VENDEE. **I. L. R 38 Calc. 127**

DONEE.

——— *Donee, alienation by—Gift burdened with an obligation—Restrictions on alienation* When it is doubtful, whether a deed embodies a complete dedication of property to a religious trust or merely creates a gift of that property, subject to an obligation to perform certain services, the question should be decided by reference to the deed itself. In the former case the property would be inalienable and in the latter alienable, subject to the obligation, and notwithstanding restrictions as to selling or mortgaging the said property. DASSA RAMCHANDRA *v* NARSINHA (1910) . . **I. L. R. 35 Bom. 156**

DOWER.

See MAHOMEDAN LAW—DOWER **I. L. R. 38 Calc. 475**

I. L. R. 33 All. 182: 291: 421: 457
I. L. R. 35 Bom. 386

DOWER—*concld.*

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS. 2 AND 4.
I. L. R. 33 All. 327

DRAINAGE.

——— *Calcutta Municipal Act (Bengal III of 1899), ss 299 and 574—Place lawfully set apart for the discharge of drainage—Private common drain belonging to the landlord not subject to right of user as public drain by the Corporation—Liability of tenant* A place lawfully set apart for the discharge of drainage, by the Corporation within the meaning of s. 299 of Calcutta Municipal Act, must be a place over which the Corporation have acquired by some procedure under the Act a right to make use of private property as a public drain. A tenant of premises is not bound, under s. 299, to convey the drainage therefrom into a drain belonging to his landlord over which the Corporation have no such right GOBINDA CHANDRA ADDY *v.* CORPORATION OF CALCUTTA (1910)
I. L. R. 38 Calc. 268

DWELLING.

See JURISDICTION . I. L. R. 34 Mad. 257

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EARNEST MONEY.

——— refund of—

See CONTRACT . I. L. R. 33 All. 166

EASEMENT.

See EASEMENTS ACT.

1. ——— Continuous easement—*Easement Act (V of 1882), ss. 38, 47—Drain, a continuous easement—Mere non-user does not extinguish continuous easement under s. 38 or 47 of the Act* A drain from one land to another is a continuous easement within the Easement Act. Where such a right of easement by drainage has been granted but was not possessed or enjoyed for more than twenty years from the date of grant but no obstruction to such use existed more than three years prior to the institution of the suit, such non-user without anything more, does not extinguish the right under s. 38 or s. 47 of the Easement Act. The non-user without anything more, is not an implied release or abandonment of the right. The period of twenty years of non-enjoyment which will extinguish the right under s. 47 begins when the enjoyment was obstructed by the servient owner or rendered impossible by the dominant owner. CHINTAKINDY PARVATAMMA *v.* LANKA SANYASI (1910) . . . I. L. R. 34 Mad. 487

2. ——— *Prescription—Continuous user for irrigation purposes of water of bundh—Annual user if to be proved—Water taken from bundh at different points in different years—User, if indefinite—Permissive user.* Where it was proved that the defendant had been taking water from plaintiff's *bundh* for irrigating his paddy lands, whenever occasion required, for more than twenty years:—*Held*, that the defendant had acquired the right to the easement by prescription. That it was not necessary for him to prove an annual user, the statute only requiring enjoyment without interruption for twenty years and not actual user. *Hollings* v. *Verney, L. R 13 Q B. D. 304*, not followed *Budhu Mandal* v. *Maliat Mandal, I L R 30 Calc 1077*, and *Krista Das Chowdhry* v *Joy Narain Panja, 8 C W. N. 158*, relied on. The mode of user of the water by the defendant was not indefinite merely because openings were made by him at different points in the embankment in different years according to the height of the water in the *bundh*. The fact that the defendant had years ago paid R50 for repair of the *bundh* did not prove the user to be permissive. GHASIRAM MANDAL *v.* ASIRBAD MAHTO (1910)
15 C. W. N. 259

3. ——— Natural channel—*Flow of water—Duty of owner of land through which a natural channel runs.* The owner of land through which a river or other natural channel flows is bound within certain limits, as between himself and other riparian owners, not to do anything which shall obstruct the flow of the water or materially interfere with their rights But such owner is not bound to keep the channel clear so that the amount of water that can pass down it may not be diminished. BALDEO SINGH *v.* JUGAL KISHORE (1911) . . . I. L. R. 33 All. 619

EASEMENT OF NECESSITY.

See EASEMENTS ACT (V OF 1882), S. 13.
I. L. R. 33 All. 467

EASEMENTS ACT (V OF 1882).

——— s. 13—Easement of necessity—*Definition* An easement of necessity is an easement without which a property cannot be used at all, and not one merely necessary to the reasonable enjoyment of the property. *Wheeldon* v. *Burrows, L. R 12 Ch D 31*, followed. *Union Lighterage Company* v. *London Graving Dock Company*, [*1902*] *2 Ch. D. 557*, and *Ray* v. *Hazeldine*, [*1904*] *2 Ch D. 17*, referred to. SUKHDEI *v.* KEDAR NATH (1911)
I. L. R. 33 All 467

EDITOR, PRINTER AND PUBLISHER.

See CONTEMPT . . 15 C. W. N. 771

EJECTMENT.

See BENGAL TENANCY ACT, S. 106
15 C. W N. 974

See CIVIL PROCEDURE CODE, 1882, S. 539.
I. L. R. 35 Bom. 470

See CIVIL PROCEDURE CODE, 1908, S. 11, EXPL. IV . I. L. R. 35 Bom. 507

See LANDLORD AND TENANT.
I. L. R. 34 Mad. 161

——— *Ejection—Inamdar right of, to eject tenants—Presumption of such right,* There is no presumption that an inamdar has a

EJECTMENT—*concld.*

right to eject persons in possession of inam lands. He must prove such a right. MADDU YERRAYYA *v.* YADULLA KANGALI NAIDU (1910)
I. L. R. 34 Mad. 246

EMBANKMENT

——— *Bengal Embankment Act (II of 1882), s 76, cls. (a), (b)—"Addition to existing embankment," meaning of—Increasing height of embankment—Essentials of offence under s. 76 (b)* The words "existing embankment" in s. 76 (*b*) of Beng. Act II of 1882 mean an embankment existing at the time the addition is made. *Ajodhya Nath Koila* v. *Raj Krishto Bhar, I. L. R 30 Calc. 481*, followed *Goverdhan Sinha* v. *Queen-Empress, I. L. R. 11 Calc. 570*, explained as overruled. The only offence constituted by cl (*b*), as distinguished from cl (*a*) of s 76, is the omission to obtain the sanction of the Collector to the addition to an existing embankment within a prohibited area irrespective of the question whether such act is likely to interfere with, counteract, or impede any public embankment and public watercourse. RAMNATH PANDIT *v.* EMPEROR (1911)
I. L. R. 38 Calc. 413

ENDOWMENT.

See HINDU LAW—ENDOWMENT.
I. L. R. 38 Calc. 526

See HINDU LAW—GIFT.
I. L. R. 33 All. 793

ENGLISH LAW.

——— rules of, if apply to India—

See LIBEL . . 15 C. W. N. 995

ENHANCEMENT OF RENT.

——— suit for—

See BENGAL TENANCY ACT, s. 188.
I. L. R. 38 Calc. 270

ENQUIRY.

See CRIMINAL PROCEDURE CODE, ss 117, 242 . . I. L. R. 34 Mad. 139

EQUITABLE LIEN.

See TRANSFER OF PROPERTY ACT, ss. 82, 100 . . I. L. R. 33 All. 708

EQUITABLE MORTGAGE.

——— *Transfer of Property Act (IV of 1882), s. 59—One of several joint-mortgagors possessing no property comprised in the title-deeds deposited, of properties within Ordinary Original Civil Jurisdiction of the High Court—Jurisdiction—Letters Patent, cl. 12—Mortgage-decree* Where several joint-mortgagors had effected an equitable mortgage by deposit of title-deeds, one of them having no interest in any of the properties covered by the deposited title-deeds, within the Ordinary Original Jurisdiction of the High Court.—*Held*, that the defendants having incurred a joint debt and that debt having been secured by them by a deposit of title-deeds, they were jointly responsible, and the question whether one of the defendants was interested or not in any of the properties covered by the deposited deeds in no way affected the question of jurisdiction of the Court. It is not relevant in such a suit to enquire what interest each one of the mortgagors had in the properties comprised in the title-deeds jointly deposited by them. MATIGARA COAL CO LD. *v* SHRAGERS, LD. (1911)
I. L. R. 38 Calc. 824

EQUITABLE MORTGAGE—*concld.*

EQUITY OF REDEMPTION.

See MORTGAGE . I. L. R. 34 Mad. 115

ESCHEAT

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 91 . I. L. R 33 All. 111

ESTATES PARTITION ACT.

See PARTITION ACT.

ESTOPPEL.

See CHARITABLE TRUSTS
I. L. R 34 Mad. 406

See JURISDICTION.
I. L. R. 34 Mad. 257

See LANDLORD AND TENANT.
15 C. W. N. 970

See LAND REGISTRATION.
I. L. R. 38 Calc. 512

See MAHOMEDAN LAW—DOWER.
I L R. 33 All. 291

See MINOR . . 15 C. W. N. 239

See MORTGAGE . 15 C. W. N. 572

See VENDOR AND SUB-VENDEE.
I. L. R. 38 Calc. 127

1. ——— *Evidence Act (I of 1872), s 115—Acquiescence—Both parties equally conversant with true state of facts—Vague allegations.—Real controversy to be ascertained by the Judge.* Where parties make vague and loose allegations, it is always essential to the correct determination of the suit that the real controversy should be ascertained by the Judge by questioning their legal advisers as to what is exactly their position in the matter. Where both parties to a suit are equally conversant with the true state of facts, it is absurd to refer to the doctrine of estoppel. In the year 1871 Government granted to the defendants' predecessor-in-title a certain plot of land situate at Dhandhuka. The grant expressly stated that a strip of land belonging to Government was the southern boundary of the plot so granted. This statement was repeated in the mortgage-deed executed by the defendants' predecessor-in-title to the defendants themselves in the year 1893. In the year 1895 the defendants purchased the said plot and encroached on the strip by extending their building on it. Thereupon the Secretary of State for India in Council brought a suit against them to recover possession of the strip after removing the defendants' encroachment. The suit was brought in the year 1908. The defendants' plea was that

ESTOPPEL—*contd.*

they were in possession and enjoyment for a long time and consequently there was acquiescence and estoppel on the part of the officers of Government and Dhandhuka Municipality and they wished to lead evidence to prove their plea *Held*, that the defendants' title-deeds having brought to their knowledge the title of the Government, the doctrines of estoppel and acquiescence were not applicable, and the suit was governed by sixty years' limitation, the Government being a party to it. RANCHODLAL VANDRAVANDAS *v* THE SECRETARY OF STATE FOR INDIA (1910) . **I. L. R 35 Bom 182**

2. ———— Vendor and sub-vendee—*Unpaid vendor—Appropriation—Jute trade, usage of—Pucca delivery orders—Negotiability—Documents of title—Indian Contract Act (IX of 1872), s. 108—Transfer of Property Act (IV of 1882), s. 137—Damages* A delivery order is recognised as a document of title under s 108 of the Contract Act and s. 137 of theTransfer of Property Act, and under a delivery order the transferee acquires a title to the goods to which it relates. By the usage of the jute trade in Calcutta, *pucca* delivery orders are issued only on cash payment,are passed from hand to hand by endorsement, and are sold and dealt with in the market as absolutely representing the goods to which they relate On the 1st March, 1909, the defendant company sold to J. & Co.'s principals certain Hessian cloth on the terms that " payments were to be made in cash in exchange for delivery order on sellers, and delivery of the goods was to be given and taken ready payment against *pucca* delivery order." A *pucca* delivery order was issued on the 2nd March by the defendant company in favour of J. & Co.'s principals or order, embodying the term " ready shipment." On the 3rd March J. & Co requested the plaintiffs to advance money on the security of the delivery order. The plaintiffs on making enquiries at the mills were informed the delivery order was " all right " On the 4th March J. & Co obtained an advance of money from the plaintiffs on the pledge of the delivery order and duly endorsed the delivery order to the plaintiffs. On the same date J. & Co handed the defendant company a cheque in payment of the goods comprised in the delivery order. On the 8th March the defendant company presented the cheque for payment, but it was dishonoured. The defendant company thereupon refused to give delivery of the goods to the plaintiffs under the delivery order. The plaintiffs obtained an absolute release of all J. & Co.'s interest in the delivery order, and brought an action against the defendant company for delivery of the goods or their value or damages for conversion. *Held*, that the defendant company were estopped from denying that cash had been paid for the goods to which the delivery order related and they could not claim to be entitled to a lien as against the plaintiffs The defendant company were further estopped from denying that they had appropriated goods of the required quantity and description to the delivery order, and that they held these goods for the plaintiffs. *Goodwin* v. *Robarts, L. R. 1 A. C.* 476, referred to ANGLO-INDIA JUTE MILLS Co. *v.* OMADEMULL (1910) . **I L. R. 38 Calc. 127**

ESTOPPEL—*concld.*

ESTOPPEL BY JUDGMENT.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 44 (*b*) . . **I. L. R. 35 Bom. 297**

EVIDENCE

See AGRA TENANCY ACT (II OF 1901), S. 201 . . **I. L. R. 33 All. 799**

See CIVIL PROCEDURE CODE (1908), S 100, O. XLV, R 27. **I. L. R. 3 All. 379**

See CRIMINAL PROCEDURE CODE, S 145. **I. L. R. 34 Mad. 138**

See CUSTOM . **I. L. R. 33 All. 257**

See DIVORCE . **I. L. R. 38 Calc. 907**

See EVIDENCE ACT.

See PENAL CODE, S. 409. **I. L. R. 33 All. 249**

See PRACTICE . **I. L. R. 35 Bom. 317**

See PRE-EMPTION. **I. L. R. 33 All. 605**

See REGISTRATION ACT (III OF 1877), SS. 17, 49 . . **I. L. R. 33 All 475**

1. ———— Usufructuary mortgage—*Burden of proof—Suit for possession of mortgaged property not brought for nearly twelve years—Presumption that no consideration passed.* Where the plaintiffs, who were usufructuary mortgagees, were never given possession of the mortgaged property and did not attempt to recover possession until the period of limitation had almost expired, it was *held*, on plea raised by the defendants, that no consideration had passed, that the burden of proving that consideration had passed was rightly shifted to the plaintiffs *Achobandil* v. *Mahabir, I. L. R. 8 All. 641*, followed *Mahabir Prasad* v. *Bishan Dayal. All. Weekly Notes (1904), 163*, distinguished. BIHARI *v.* RAM CHANDRA (1911) **I. L. R. 33 All. 483**

2 ———— Prosecution of witness for perjury on deposition irregularly taken—*Evidence, irregularity in taking, under s. 360, Criminal Procedure Code (Act V of 1898)—Effect of irregularity.* Where a deposition has been read to a witness over in Court and has been admitted by him to be correct in the presence of the Judge, the fact that another witness was being examined at the time is no defence to a prosecution of the deponent for giving false evidence in the deposition so read over. *Kamatchinathan Chetty* v. *Emperor, I. L R. 28 Mad. 308*, commented on. Though a deposition so recorded might invalidate the conviction of the accused in the case in which the deposition was so recorded, the deponent having admitted its correctness may be properly convicted of perjury thereon. *Singiri Eradu* v. *Empress, Cr. R. C. No. 453 of 1894 (unreported), (II Weir's Cr. Rul. 435)*, distinguished. BOGRA *v.* EMPEROR (1910) **I. L. R. 34 Mad. 141**

EVIDENCE—*contd.*

3. ——— Unstamped promissory note executed in Rampur in favour of the Nawab of Rampur—*Suit on such note in British India—Lex loci contractus—Rampur Stamp Law, ss 52, prov. (c), and 53.* Certain moneys having been advanced by the Nawab of Rampur, a promissory note was accepted as security in favour of "the Nawab of Rampur" and bearing no stamp The Nawab, being examined on commission, stated:—"This debt is due to me personally, and, ordinarily speaking, a debt which is due to me is due to the State, and a debt which is due to the State is due to me: but the said amount I advanced from my own funds" According to the Stamp Law of Rampur a document executed in favour of the State did not require to be stamped. *Held,* that the *lex loci contractus* had to be applied and that the note in question not being drawn in favour of the Nawab in his private capacity did not require to be stamped. AMINA BEGAM *v.* THE NAWAB OF RAMPUR (1911) . **I. L. R. 33 All. 571**

4 ——— Evidence Act (I of 1872), s. 92—*Evidence, admissibility of—Evidence of acts and conduct of parties to deeds showing that they were treated as being otherwise than they purport to be—Evidence showing actual conveyances to be only mortgages—Fraud with regard to property of third person not party to deed.* S 92 of the Evidence Act (I of 1872) is applicable to an instrument "as between the parties to such instrument or their representatives in interest;" but it does not prevent proof of a fraudulent dealing with a third person's property or proof of notice that the property purporting to be absolutely conveyed in fact belonged to a third person who was not a party to the conveyance. The respondents claimed to recover possession of certain parcels of land under deeds which purported to be absolute conveyances but which the appellants contended were meant to be, and had always in fact been, treated by all the parties concerned as mortgages only, and they tendered evidence of the acts and conduct of the parties to that effect This evidence was excluded by both Courts below under s. 92 of the Evidence Act Their Lordships of the Judicial Committee on appeal were, however, of opinion that on the evidence the case for the appellants disclosed a charge of fraud against the respondents antecedent to the deeds, inasmuch as they or the persons under whom they claimed took absolute conveyances of property from the appellants with notice that such property belonged in fact to a third person, the alleged mortgagor, whose evidence would be material and necessary in the matter of the alleged fraudulent dealing. Their Lordships, therefore, without expressing any opinion on the construction or application of s. 92 of the Evidence Act in relation to the deeds came to the conclusion that the rejected evidence should be heard, subject to any objections which the respondents might be advised to take; as the Court would then be in a position to deal hereafter (if necessary) with the admissibility of the evidence in relation not only to the deeds, but also in relation to the questions that might arise in connection with the alleged knowledge or conduct of the parties, antecedent to the execution of those deeds, and upon which their validity might possibly depend. MAUNG KYIN *v.* MA SHWE LA (1911) **I. L. R 38 Calc. 892**

EVIDENCE—*concld.*

EVIDENCE ACT (I OF 1872).

——— s. 4.

See AGRA TENANCY ACT (II OF 1901), S. 201 . . **I. L. R. 33 All. 799**

——— ss. 10, 30.

See CONSPIRACY TO WAGE WAR. **I. L. R. 38 Calc. 169**

——— s. 15.

See SEDITION . **I. L. R. 38 Calc. 253**

——— s. 30.

See CONFESSION . **I. L. R. 38 Calc. 446**

See CONSPIRACY TO WAGE WAR **I. L. R. 38 Calc. 559**

——— s. 44—*Res judicata—Fixed rate tenancy—Partition—Power of joint-tenants to partition—Suit to recover joint possession* A certain holding owned jointly by tenants at fixed rates was partitioned by an award. One party sued on the award to recover exclusive possession of certain plots and obtained a decree for possession and mesne profits, which was executed. Subsequently the other party sued to regain joint possession of these plots and pleaded that the former decree was by a Court not competent to pass it and therefore not binding on them. There was nothing to show whether the former suit was filed before or after the coming into force of the Agra Tenancy Act, 1901, or whether the landlord had or had not assented to the partition. *Held,* that the plaintiffs had failed to show that the former decree was passed by a Court which had not jurisdiction, and that the present suit was barred *Achhey Lal* v. *Jankı Prasad, I. L. R. 29 All. 66,* explained. RAGHUNATH KALWAR *v.* BALA DIN KALWAR (1910) . **I. L. R. 33 All. 143**

——— s 58—*Jurisdiction—Court—Consent of the parties as to jurisdiction—Suit of value beyond the jurisdiction of the Court—Trial of suit—Jurisdiction cannot be questioned in appeal.* The plaintiffs filed a suit for partition in the Court of the Subordinate Judge, First Class, valuing their claim at an amount which made the suit triable by that Court alone. The Judge, however, made over the trial of the suit to the Joint Subordinate Judge. In the latter Court, neither party raised any objection on the ground of jurisdiction; nor was any issue raised relating to it. The trial proceeded on merits: and a decree was passed in favour of plaintiffs. The defendant appealed to the lower appellate Court, where he, for the first time, raised the question of jurisdiction on the strength of the market value stated in the plaint. The objection was overruled. On appeal:—*Held,* that the market

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 58—*concld.*

value stated in the plaint *primâ facie* determined the jurisdiction. *Held*, further, that as neither party raised any question as to want of jurisdiction in the first Court, and as they by their conduct and silence treated the market value to be of the amount sufficient to give jurisdiction to the Court they dispensed with proof on the question by their tacit admissions, and thus the principle of law laid down in s 58 of the Indian Evidence Act came into operation and prevented the result of the statement of the market value in the plaint. As a rule, parties cannot by consent give jurisdiction where none exists This rule applies only where the law confers no jurisdiction. It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question as to jurisdiction, where that question depends on facts to be ascertained JOSE ANTONIO BARETTO *v* FRANCISCO ANTONIO RODRIQUES (1910) **I. L. R. 35 Bom 24**

——— s. 91.

See CRIMINAL PROCEDURE CODE, s 103. **I. L R. 34 Mad. 349**

See LIMITATION ACT, 1877, SCH. II, ARTS. 132, 134 . **I. L. R. 35 Bom. 438**

See PARTITION . **15 C. W. N. 375**

——— s. 92

See CONTRACT ACT, s. 65 **15 C. W N. 408**

See EVIDENCE, ADMISSIBILITY OF **I. L. R 38 Calc. 892**

1. ——— *Admissibility of evidence to show that a document purporting to be a sale-deed is in reality a deed of gift.* In the appeal their Lordships were of opinion that the decree of the High Court in *Faiz-un-nissa* v. *Hanif-un-nissa, I. L. R. 27 All. 612*, could not be supported and remitted the case to the High Court to be dealt with on the evidence. HANIF-UN-NISSA *v* FAIZ-UN-NISSA (1911) . . . . **I. L. R. 33 All. 340**

2. ——— prov. I—*Sale-deed—Contemporaneous agreement—Admissibility—Fraud* A desired to set aside an ostensible sale-deed by proving that a representation, agreement or promise was made to him at the time of execution that the deed would not be enforced as a sale-deed. *Held*, that no evidence of such a representation, agreement or promise could be admitted for this purpose. *Dattoo* v. *Ramchandra, I. L. R. 30 Bom. 119*, and *Keshavrao* v. *Raya, I. L. R. 8 Bom. L. R. 287*, followed. DAGDU VALAD SADU *v.* NANA VALAD SALU (1910) . . . **I. L R. 35 Bom. 93**

3. ——— *Dekkhan Agriculturists' Relief Act (XVII of 1879), s 10A—Redemption suit—Sale in reality a mortgage—Evidence of oral agreement varying the written document* The plaintiff brought a redemption suit under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) alleging that the deed which he had executed to the defendant, though on its face a deed of sale, was in reality only a deed of mortgage, the defendant having promised at the time of the execution of the deed that he would allow redemption on payment of the money advanced The defendant replied that the transaction was sale The First Class Subordinate Judge of the Dharwar District to which s 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not extended found, on the evidence, that the deed passed by the plaintiff was not proved to be really a mortgage and dismissed the suit The plaintiff appealed urging that the proper issue in the case was as to whether the sale-deed was not obtained or induced by the defendant by means of fraud or misrepresentation within the meaning of prov I of s 92 of the Evidence Act (I of 1872) and prayed for a remand. *Held*, confirming the decree, that the plaintiff sought to make a new case in appeal in so far as he endeavoured to base his case, not upon a separate oral agreement, but upon some fraud which would invite the application of prov. I of s. 92 of the Evidence Act (I of 1872) *Held*, further, that in the districts to which s. 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not extended, it was not open to the Court to enter upon a defence which consisted of an allegation of an oral agreement varying the written contract. *Dagdu* v. *Nana, I. L. R 35 Bom 93*, and *Sangira Malappa* v. *Ramappa, I. L. R. 34 Bom. 59*, followed. *Balkrishen Das* v. *W. F Legge, I L R. 22 All 149*, referred to. SOMANA BASAPPA *v.* GADIGEYA KORNAYA (1910) **I. L R. 35 Bom. 231**

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 92—*concld.*

had executed to the defendant, though on its face a deed of sale, was in reality only a deed of mortgage, the defendant having promised at the time of the execution of the deed that he would allow redemption on payment of the money advanced The defendant replied that the transaction was sale The First Class Subordinate Judge of the Dharwar District to which s 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not extended found, on the evidence, that the deed passed by the plaintiff was not proved to be really a mortgage and dismissed the suit The plaintiff appealed urging that the proper issue in the case was as to whether the sale-deed was not obtained or induced by the defendant by means of fraud or misrepresentation within the meaning of prov I of s 92 of the Evidence Act (I of 1872) and prayed for a remand. *Held*, confirming the decree, that the plaintiff sought to make a new case in appeal in so far as he endeavoured to base his case, not upon a separate oral agreement, but upon some fraud which would invite the application of prov. I of s. 92 of the Evidence Act (I of 1872) *Held*, further, that in the districts to which s. 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not extended, it was not open to the Court to enter upon a defence which consisted of an allegation of an oral agreement varying the written contract. *Dagdu* v. *Nana, I. L. R 35 Bom 93*, and *Sangira Malappa* v. *Ramappa, I. L. R. 34 Bom. 59*, followed. *Balkrishen Das* v. *W. F Legge, I L R. 22 All 149*, referred to. SOMANA BASAPPA *v.* GADIGEYA KORNAYA (1910) **I. L R. 35 Bom. 231**

——— s. 95.

See CONTRACT ACT, s. 63 **I. L. R. 34 Mad. 156**

——— ss. 114, 133.

See ACCOMPLICE . **I. L. R. 38 Calc. 96**

——— s. 115—*Estoppel—Acquiescence—Both parties equally conversant with true state of facts—Vague allegations—Real controversy to be ascertained by the Judge.* Where parties make vague and loose allegations, it is essential to the correct determination of the suit that the real controversy should be ascertained by the Judge by questioning their legal advisers as to what is exactly their position in the matter Where both parties to a suit are equally conversant with the true state of facts, it is absurd to refer to the doctrine of estoppel In the year 1871 Government granted to the defendants' predecessor-in-title a certain plot of land situate at Dhandhuka. The grant expressly stated that a strip of land belonging to Government was the southern boundary of the plot so granted. This statement was repeated in the mortgage-deed executed by the defendants' predecessor-in-title to the defendants themselves in the year 1893. In the year 1895 the defendants purchased the said plot and encroached on the strip by extending

EVIDENCE ACT (I OF 1872)—*concld*

——— s. 115—*concld.*

their building on it. Thereupon the Secretary of State for India in Council brought a suit against them to recover possession of the strip after removing the defendants' encroachment. The suit was brought in the year 1908. The defendants' plea was that they were in possession and enjoyment for a long time and consequently there was acquiescence and estoppel on the part of the officers of Government and Dhandhuka Municipality and that they wished to lead evidence to prove their plea. *Held*, that the defendants' title-deeds having brought to their knowledge the title of the Government, the doctrines of estoppel and acquiescence were not applicable, and the suit was governed by sixty years' limitation, the Government being a party to it. RANCHODLAL VANDRAVANDAS *v.* THE SECRETARY OF STATE FOR INDIA (1910)
I. L. R. 35 Bom. 182

EXAMINATION OF WITNESS

See INSOLVENCY . **I L R 38 Calc. 542**

EXCAVATION OF TANK.

See PROHIBITORY ORDER.
I. L. R. 38 Calc. 876

EXCEPTED RISKS.

See COMMON CARRIER, LIABILITIES OF.
I. L. R. 38 Calc. 28

EXCISE ACT (BENG. VII OF 1878).

——— rule 16—Sanction for prosecution—*Criminal Procedure Code (Act V of 1898), s. 195—Statement not necessarily false—License, if personal* Under the excise law, the holder of an excise license is forbidden to sub-let his shop or transfer his license or allow anybody to sell liquor under his license. Where, therefore, a licensee made a statement in a criminal case that a wine shop was exclusively owned by him while it was found in a civil suit that he had a dormant partner and the decision in that suit was under appeal :—*Held*, that as the interest claimed by the alleged partner may be without legal justification, the licensee in making the statement may have unconsciously deviated into the truth, and that in these circumstances no sanction to prosecute the licensee for perjury should be granted. RAKHAL CHANDRA SHAHA *v.* DAMODUR SHAHA (1909)
15 C. W. N. 169

EXCLUSIVE POSSESSION.

——— claim of—

See DISPUTE CONCERNING LAND.
I. L. R. 38 Calc. 889

EXECUTION OF DECREE.

See APPEAL . **I. L. R. 38 Calc. 717**

See CIVIL PROCEDURE CODE, 1882, ss. 230, 235 . . **I. L. R. 33 All. 517**

EXECUTION OF DECREE—*contd.*

See CIVIL PROCEDURE CODE, 1882, ss. 268, 274 . . **I. L. R. 35 Bom. 288**

See CIVIL PROCEDURE CODE, 1882, ss. 276, 295, 320, 325A **I. L. R. 35 Bom. 516**

See CIVIL PROCEDURE CODE, 1882, ss. 282, 287 . . **I. L. R. 35 Bom. 275**

See CIVIL PROCEDURE CODE, 1882, s 316.
I L R. 33 All. 63

See CIVIL PROCEDURE CODES, 1882, s. 317; 1908, s 66
I. L. R. 35 Bom. 342

See CIVIL PROCEDURE CODE, 1882, ss. 341 AND 349 . **I. L. R 33 All. 279**

See CIVIL PROCEDURE CODE, 1908, s. 47.
I. L. R. 35 Bom. 452

See CIVIL PROCEDURE CODE, 1908, s. 48, AND SCH I, O. XXI.
I. L. R 35 Bom. 103

See CIVIL PROCEDURE CODE, 1908, s. 60.
I. L. R. 33 All. 529

See CIVIL PROCEDURE CODE, 1908, O XXI, RR 18, 19, 20 . **I. L. R. 33 All. 240**

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 89 . . **I. L. R 33 All. 481**

See CIVIL PROCEDURE CODE, 1908, O. XXIV, R 14 . **I. L. R. 35 Bom. 248**

See CIVIL PROCEDURE CODE, 1908, O. XXXIX, R 1 . **I. L. R. 33 All. 79**

See COURT OF WARDS ACT (III OF 1899), SS 16, 19, AND 49.
I. L R. 33 All. 791

See LIMITATION . **I. L R. 33 All. 264**

See LIMITATION ACT (XV OF 1877), S 3, SCH. II, ARTS. 13 AND 14.
I. L R. 33 All. 93

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 180 . **I. L. R. 33 All. 154**

See MORTGAGE . **I L. R. 35 Bom. 371**

See MORTGAGE.
15 C. W. N. 80; 370; 748

See POLITICAL AGENT AT SIKKIM, COURT OF . . **I. L. R. 38 Calc. 859**

1. ——— Property under wrongful attachment stolen by bailiff—*Attachment—Liability of attaching decree-holder—Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 35 (j)—Jurisdiction* Where crops of a third party had been wrongfully attached by a decree-holder as those of his judgment-debtor, and, while so attached, were stolen by the *shahana* (or bailiff) in whose custody they were, it was *held*, that the decree-holder was responsible to the owner for their value; also, that a suit by the owner against the decree-holder to recover the value of the crops and damages was not a suit cognizable by a Court of Small Causes. *Goma*

EXECUTION OF DECREE—*contd*

Mahad Patil v. *Gokaldas Khimji, I. L. R. 3 Bom. 74,* followed. *Musammat Subjan Bibi* v *Shaikh Sariatulla, 3 B L R A. J. 413,* not followed *Kissori Mohun Roy* v. *Harsukh Das, I. L R 7 Calc. 436,* referred to. BISHAMBAR NATH *v.* GADDAR (1910) . . . . **I. L. R. 33 All 306**

2. ——— **Joint decree-holders**—*Application for execution by one on behalf of himself and others—Leave to bid obtained for himself—Purchase by applicant alone—Rights of co-decree-holders in respect of property so purchased.* One of several joint decree-holders made an application for execution on his own behalf and on behalf of his co-decree-holders, and then alone obtained leave to bid for the property, and purchased it, the purchase-money being equal to the amount of his share of the decree *Held,* in a suit by the co-decree-holders to recover their shares of the property so purchased, that they were entitled to recover, the equity being on the side of the plaintiffs. KESRI *v.* GANGA SAHAI (1911) . **I. L. R. 33 All 563**

3. ——— **Rent-decree**—*Limitation—Chota-Nagpur Encumbered Estates Act (Beng. VI of 1876), ss. 3, 12—Chota-Nagpur Encumbered Estates Amendment Act (Beng. III of 1909), s. 4* The words "Civil Courts" in s. 3 of Act VI of 1876, as amended by s 4 of Act III B C of 1909, are comprehensive enough to include the Revenue Courts deciding rent-suits and executing rent-decrees. *Nilmoni Singh Deo* v *Taranath Mukerjee, I. L. R. 9 Calc. 295; L R. 9 I. A. 174,* followed. PRATAP UDAINATH SHAH DEO. *v.* MADAN MOHAN NATH SABI (1910)
I. L. R. 38 Calc. 288

4. ——— **Fraud**—*Sale—Application to set it aside—Fraud should be definitely established—Irregularity, how far it affects auction-purchaser—Second application for setting aside sale, if it lies.* The word "fraud" is very loosely used in the class of cases instituted for setting aside sales, any irregularity being taken to be *fraud,* with all the consequences that such a finding involves. A finding of fraud, however, should be reserved for that which is dishonest and morally wrong; and it is not sufficient to come to a vague general finding of fraud; actual fraud must be established. A Court should have much hesitation in visiting an innocent auction-purchaser at one of its sales with the consequences of an irregularity or defect of procedure, which was not discovered by the Court or its officers, at the time of sale, and was not apparent on the face of the record Where an application to have a sale set aside was dismissed for default and the application for restoration was rejected, it is doubtful whether the applicant can successfully prefer a second application for the same purpose. *Lalla Bunseedhur* v. *Koonwar Bindeseree Dutt Singh, 10 Moo. I A. 454,* and *Malkarjun* v. *Narhari, I. L. R. 25 Bom. 337, L. R. 27 I. A. 216,* referred to. *Khairajmal* v. *Daim, I. L. R. 32 Calc. 296,* distinguished. PARESH NATH MALLICK *v.* HARI CHARAN DEY (1911)
I. L. R. 38 Calc. 622

EXECUTION OF DECREE—*contd*

5. ——— **Successive applications to execute decree**—*Decree—Execution—First darkhast made during the pendency of the previous darkhast—Decision on the first darkhast does not operate as res judicata if a new darkhast filed within time of the disposal of the previous darkhast.* A decree obtained in 1898 was, after three intermediate applications to execute it, sought to be executed in 1903. This application was ordered by the Subordinate Judge to be proceeded with: and his order was confirmed on appeal by the District Judge on the 2nd August, 1905 In the meanwhile, in 1904, the decree-holder filed another *darkhast* to execute the decree; but it was rejected by the Subordinate Judge as barred by limitation. This order was not appealed against The present *darkhast,* filed in 1907, was held to be barred by *res judicata* in virtue of the decision on the *darkhast* of 1904. On appeal:—*Held,* reversing the decision, that the right of the decree-holder to proceed in execution on the strength of the Appellate Court's order in his favour could not be affected by the order of the Subordinate Judge passed in the *darkhast* of 1904, because the latter was the order of a lower Court and it was passed in a *darkhast* which could not have legal validity so long as the *darkhast* of 1903 was kept alive by proper proceedings. BALKRISHNA WAMNAJI *v.* SHIVA CHIMA (1911)
I. L. R. 35 Bom. 245

6. ——— **Stay of execution**—*Civil Procedure Code (Act V of 1908), s. 145, O. XLI, r. 5—Whether a security bond given by the Secretary of State for India in Council, but which was not sanctioned with the concurrence of a majority of votes at a meeting, is sufficient—Government of India Act, 1858 (21 & 22 Vict., c. 106), ss. 39, 40, 41, 42 and 55—Government of India Act, 1859 (22 & 23 Vict., c. 41), s. 1.* A decree for recovery of possession of immoveable property having been passed against a minor under the Court of Wards, and the Collector, an appeal was preferred against it to the High Court; subsequently the appellants applied for stay of execution of the decree, and as security they offered a guarantee to be executed by the Government of Bengal on behalf of the Secretary of State for India in Council; but it was not shown that the security had been sanctioned by the Secretary of State for India in Council with the concurrence of a majority of votes at a meeting, as provided by s. 40 of the Government of India Act, 1858. *Held,* that the execution of the decree could not be stayed inasmuch as the security offered was not sufficient. SRINIBASH PRASAD SINGH *v.* KESHO PRASAD SINGH (1911)
I. L. R. 38 Calc 754

7. ——— **Attachment—Sale proclamation—Notice**—*Execution of decree—Civil Procedure Code (Act V of 1908), O. XXI, rr. 57, 66—"Default," meaning of.* On 20th February, 1909, an execution case, which could not proceed owing to the failure of the decree-holder to serve notice on the judgment-debtor as required by O. XXI, r. 66, of the Civil Procedure Code, 1908, was dis-

EXECUTION OF DECREE—*concld.*

missed, the order concluding with these words:—"The execution case is accordingly dismissed, the properties will remain under attachment. Decree-holder will bear his own costs." On 25th March, 1909, the decree-holder without issuing a fresh attachment again applied for sale of the property, and duly served the required notice. The judgment-debtor objected on the ground that there was no subsisting attachment. *Held*, that this application must also be dismissed *Held, per* CHITTY, *J.*, that the words of O. XXI, r. 57, are imperative and the attachment on the property ceased by operation of law on the 20th February 1909, and that the word "default" in that rule cannot be given a restricted meaning so as to confine it to default in appearance, in the payment of process fees, or in production of documents, but must have its ordinary meaning, namely, failure to do what one is legally bound to do. *Held, per* COXE, *J.*, that under the Civil Procedure Code, 1882, the striking off of execution proceedings was capable of different interpretation in different circumstances, but O. XXI, r 57, was enacted to put a stop to the confusion The application for execution having been dismissed the result specified in O. XXI, r. 57, must necessarily follow. *Puddomonee Dossee* v. *Roy Muthooranath Chowdhry, 20 W. R. 133, Biswa Sonan Chunder Gossyamy* v. *Binanda Chunder Dibingar Adhikar Gossyamy, I. L. R. 10 Calc. 416, Mohunt Bhagwan Ramanuj Das* v. *Khetter Mon Dassi, 1 C. W. N 617*, referred to. NAMUNA BIBI *v.* ROSHA MIAH (1911)
I. L. R. 38 Calc. 482

EXECUTION OF WILL.

See WILL . **I. L. R. 38 Calc 355**

EXECUTION PROCEEDINGS.

See ATTACHMENT BEFORE JUDGMENT.
I. L. R. 38 Calc. 448

EXECUTOR.

——— liability of—

See JURISDICTION.
I. L. R 34 Mad. 258

EX PARTE DECREE.

See FRAUD . **I. L. R. 38 Calc. 936**

See SUBSTITUTED SERVICE.
I. L. R. 38 Calc. 394

EXPERT IN HANDWRITING.

See WILL . . **15 C. W. N. 729**

EXPROPRIETARY RIGHTS.

See AGRA TENANCY ACT (II OF 191), SS. 10, 20, 83 . **I. L. R. 33 All. 695**

EXPROPRIETARY TENANT.

See AGRA TENANCY ACT (II OF 1901), SS. 10, 202 . **I. L. R. 33 All. 507**

EXTRADITION.

1. ——— **Effect of illegal arrest on trial of accused**—*Criminal Procedure Code (Act V of 1898), s. 188.* Where a man is in the country and is charged before a Magistrate with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country The principle upon which English cases to this effect are based underlies also s 188 of the Criminal Procedure Code (Act V of 1898) EMPEROR *v.* VINAYAK DAMODAR SAVARKAR (1910)
I L. R. 35 Bom. 225

2 ——— **Jurisdiction of High Court to revise proceedings of Magistrates under the Extradition Act**—*High Courts Act, 1861 (24 & 25 Vict, c. 104), s 15—Extradition Act (XV of 1903), ss. 3 and 4.* The High Court has no jurisdiction under s. 15 of the Charter Act, to revise the proceedings of a Magistrate acting under ss 3 and 4 of the Extradition Act *In re Mohunt Deva Dass, I. L. R. 38 Calc 550 (note)*, referred to. STALLMANN, RUDOLF *v.* EMPEROR (1911) . . . . **I. L. R. 38 Calc. 547**

EXTRADITION ACT (XXI OF 1879).

——— **s. 14**—*Extradition Act (XXI of 1879), s. 14, enquiry under—High Court's power to transfer enquiry to another Magistrate or to control the procedure therein.* The High Court had no power to order the transfer of an enquiry under s. 14 of the Extradition Act, XXI of 1879, from the Court of the Magistrate specially authorised to hold the enquiry because the competency of the Magistrate to hold the enquiry depended on the authorization of the Executive Government. The law also did not empower the High Court to request the Government to appoint another Magistrate to enable it to transfer the enquiry to that Magistrate if appointed. The High Court refused to direct by what procedure the Magistrate should be guided in the further conduct of the enquiry, as it did not possess any power to control or interfere in the conduct of an enquiry held under s 14 of the Act. MOHUNT DEVA DASS, *In re* (1898) . **15 C. W. N. 735**
s. c. I. L. R. 38 Calc. 550n

EXTRADITION ACT (XV OF 1903).

——— **s. 3—Bail, High Court if may direct.** As regards allowing bail to a prisoner against whom proceedings are pending under the Indian Extradition Act of 1903, the High Court has the fullest discretion, having regard to the provisions relating to bail in the Criminal Procedure Code by which the matter must be regulated. STALLMANN *v.* EMPEROR (1911) . **15 C. W. N. 736**

——— **ss. 3, 4.**

See EXTRADITION.
I. L. R 38 Calc. 547

——— *Jurisdiction of Magistrate—Arrest under illegal warrant if vitiates trial otherwise regular—Local jurisdiction of enquiring Magistrate, fugitive if must be within—High Court if may review evidence before Magistrate—Prima facie*

EXTRADITION ACT (XV OF 1903)— *concld.*

——— ss. 3, 4—*concld*

case, if sufficient—Opportunity of defence to fugitive refusal of, if vitiates enquiry and affects jurisdiction. S. 3 of the Act gives the Government authority to empower any Magistrate to enquire into a case, provided that he is one who has jurisdiction to enquire into a crime of the nature of that for which extradition is sought and does not require that the fugitive must be within the local jurisdiction of such Magistrate. The person against whom extradition proceedings are taken must under the Act be given a reasonable opportunity of adducing evidence in his defence. Where an application of such a person for adjournment to allow him to adduce evidence to be brought down from Europe was rejected without assigning any reason and it was found that the time between the arrest of the fugitive and the date of his trial was not sufficient to enable him to obtain evidence from Europe :— *Held*, that the proper opportunity for defence as provided by the Act had not been given by the Court and the enquiry was not therefore according to law and the irregularity went to the jurisdiction of the Court · *Held*, further, that an extradition warrant issued on such proceeding was invalid and did not justify detention under it Where a warrant under s. 4 of the Indian Extradition Act had been issued by a Magistrate when the fugitive was outside the local limits of the jurisdiction of the Magistrate :—*Held* (*per* MOOKERJEE, *J*), that the warrant was at its inception without jurisdiction. *Per Curiam* Irregularity in the original arrest was immaterial, provided that the proceedings of the Court when it enquired into his case were right. *R* v *Weil, 15 Cox. C. C. 189 ; 9 Q. B. D 701*, followed. *In re* STALLMANN (1911) **15 C. W N. 1053**

EXTRADITION ACT (33 & 34 VICT. C. 52).

——— how far applicable to India—

See CRIMINAL PROCEDURE CODE, 1898, s. 491 . . **15 C. W. N. 1053**

F

FACT.

——— findings of—

See SECOND APPEAL. **I. L. R. 38 Calc. 278**

——— question of—

See WILL . . **I. L. R. 38 Calc. 355**

——— *Fact, determination of question of—Credibility of witnesses—Trial Judge, opinion of, value of—Strong case established by plaintiff's evidence—Necessity of rebuttal by personal testimony of defendants—Failure of defendants to depose—Material witness not cited by plaintiff, because witness expected to be summoned by defendants—Costs—Successful appellant ordered to pay costs of unsuccessful—Set off against costs decreed.* The appellant sued to recover jewellery of the value of ₹29,000 which she alleged she had deposited with the respondents who were husband and wife for safe custody and produced receipts, purporting to be signed on their behalf by their son, which the respondents alleged were forgeries. The respondents denied the deposit and alleged that the only jewels they had received from the appellant had been deposited with them by way of security for two loans for ₹2,500 and ₹1,000 and they produced promissory notes for the amounts, purporting to be signed by the appellant which the appellant alleged were forgeries The story told by the appellant was corroborated by witnesses of whose respectability and credit the Trial Judge had exceptional advantages of forming an opinion, and he held that the evidence established the appellant's case. *Held*, by the Judicial Committee, differing from the High Court, that the evidence adduced by the appellant if believed established a strong case which it was incumbent on the respondents to meet by personal denials. All they did however was to put against it the denial of the signature to the receipts by their son and evidence, not very satisfactory, on a collateral matter, *viz*, the execution of the promissory notes by the appellant The judgment of the High Court was reversed and that of the Trial Judge restored. A material witness by whose hands, the appellant alleged, the jewellery had been sent to the respondents for deposit, and who was a relative of the respondents and had been a servant of the appellant but had previously to the suit left her service, was summoned by the respondents whose conduct showed that they were going to make her their witness. *Held*, that it was not unnatural that the appellant should, as she did, leave it to the respondents to call her DURGA KUNWAR *v.* MATHURA KUNWAR (1911) . **15 C. W. N. 717**

FACTUM VALET.

See ADOPTION . **15 C. W. N. 524**

FALSE DOCUMENT.

——— making of—

See FORGERY . **I. L. R. 38 Calc. 75**

FALSE EVIDENCE.

——— False statements in an application for mutation proceedings—*Obligation to make a true declaration therein—Verification of application—Validity of Rules of the Board of Revenue, Chap. V, Rule (5)—Penal Code (Act XLV of 1860), ss. 191, 193—Land Registration Act (Beng. Act VII of 1876), ss. 42, 53, 88.* An applicant for mutation of names under s. 42 of the Bengal Land Registration Act is bound by Rule 5, Chapter V, of the Rules of the Board of Revenue, framed under s. 88 of the Act, to make a true declaration on the subject of his application, and is punishable under ss. 191 and 193 of the Penal Code for making

FALSE EVIDENCE—*concld.*

false statements therein. *Debi Saran Misser* v. *Emperor, 11 C. W N. 470,* referred to. *Queen-Empress* v. *Appayya, I. L. R. 14 Mad. 484, Durga Das Rukhit* v. *Queen-Empress, I L. R. 27 Calc. 820, Ezra* v. *Secretary of State, I. L. R 30 Calc. 36,* and *British India Steam Navigation Co* v. *Secretary of State for India, I. L R. 38 Calc 230,* distinguished Rules passed by the Board of Revenue under s. 88 of the Act, provided they refer to the procedure as to presentation, admission and verification of an application for registration under Part IV of the Act, and as to inquiries under s. 52 thereof, have the force of law. NALOO PATRA *v.* EMPEROR (1910) . . **I. L. R. 38 Calc. 368**

FAMILY NECESSITY.

See HINDU LAW **I. L R. 34 Mad. 422**

FEMALE HEIRS

——— exclusion of—

See HINDU LAW—INHERITANCE.
I. L. R. 38 Calc. 603

FIDUCIARY RELATIONSHIP.

See BANKER AND CUSTOMER.
I. L. R. 34 Mad. 128

FINE.

See CALCUTTA MUNICIPAL ACT, SS 374, 376 . . . **15 C. W. N. 906**

FIRST INFORMATION.

See CRIMINAL PROCEDURE CODE, S 154.
15 C. W. N. 198

FISHERY.

See CRIMINAL PROCEDURE CODE, S. 146
15 C. W. N. 163

——— *Limitation Act (IX of 1908), s. 26—Fishery right in navigable river if may be acquired as easement—Possession, in exercise of common right, not adverse. Quœre* Whether the exclusive right of fishery in a tidal and navigable river can be acquired by mere enjoyment in the manner provided by s. 26 of the Limitation Act. Where no grant of exclusive right of fishery in a navigable river is proved and it appeared that the plaintiff first began to fish in the exercise of a common right of all members of the public and there was nothing to show when, if ever, the right developed into the assertion of exclusive right:—*Held,* that the punishment of certain persons in criminal cases for wanton and malicious disturbance of the plaintiff when engaged in the peaceful exercise of his common right, did not constitute evidence of an assertion of exclusive right so as to entitle the plaintiff to interfere with other people fishing in the same river. ABHOY CHARAN JALIA *v.* DWARKA NATH MAHTO (1911) . . **15 C. W. N. 972**

FIXED-RATE TENANCY.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 91 . **I. L. R. 33 All. 111**

FIXTURE.

See CALCUTTA MUNICIPAL ACT, S 341.
15 C. W. N. 730

FOOTINGS.

——— *Trespass—Survey Map, evidentiary value of—Mandatory Injunction—Specific Relief Act (I of 1877), Chap X—Presumption.* The existence of footings to a wall, in the circumstances of the case, raised the presumption that the land covering such footings belonged to the owner of the wall, to which they appertained. Where a wall was constructed by the defendant on the land covering plaintiff's footings, and after its completion, a suit was brought by the plaintiff for trespass, the plaintiff not having been guilty of delay or acquiescence—*Held,* that the proper remedy was by way of mandatory injunction ordering the demolition of the defendant's wall. ABDUL HOSSAIN *v.* RAM CHARAN LAW (1911)
I. L. R. 38 Calc. 687

FOREIGN RECORDS.

See CRIMINAL PROCEDURE CODE, S. 491.
15 C. W. N. 1053

FORFEITURE

See LANDLORD AND TENANT.
I. L. R. 35 Bom. 239

See PRINTING PRESS, FORFEITURE OF.
I L. R. 38 Calc 202

FORGERY.

See CRIMINAL PROCEEDINGS, STAY OF.
I. L. R. 38 Calc. 106

——— *Making a false document—Dishonestly or fraudulently, meaning of—Alteration of document in a material part thereof—Affixing one's signature to document not required by law to be attested after execution and registration—Using a forged document—Penal Code (Act XLV of 1860), ss. 24, 25, 463, 464* and *471.* Where the accused affixed his signature to a kabuliat, which was not required by law to be attested by witnesses, after its execution and registration, below the names of the attesting witnesses, but without putting a date or alleging actual presence at the time of its execution:—*Held,* that such act did not fall within the first clause of s. 464 of the Penal Code, inasmuch as, although it may have increased the apparent evidence of its genuineness, it was not done "dishonestly" or "fraudulently" within ss. 24 and 25; and, further, that it did not justify the inference that he intended it to be believed that the document was made or signed at a time when he knew it was not made or signed, but was consistent with the hypothesis that he intended it to be believed that he would be able, if called as a witness, to prove its genuineness. The expression "*intent to defraud*" implies conduct coupled with an intention to deceive and thereby to injure. The word "*defraud*" involves two conceptions, *viz.*, deceit and injury to the person deceived, that is, an infringement of some legal right possessed by him, but not necessarily deprivation of property. *Queen-Empress* v. *Muhammud Saeed Khan, I. L.*

FORGERY—*concld.*

R. 21 All. 113, Queen-Empress v. *Abbas Ali, I. L. R. 25 Calc. 512, Abdul Rajak* v. *Queen-Empress, P. R Cr. 2,* and *Reg* v *Toshack, 4 Cox C. C. 38,* referred to. *Held,* further, that the interpolation of the name of a witness as an attestor, subsequent to the execution of a document which need not be attested, is not a material alteration thereof within the second clause of s. 464. *Mohesh Chunder Chatterjee* v. *Kamini Kumari Dabia, I. L. R. 12 Calc. 313, Venkatesh Prabhu* v. *Baba Subraya, I. L R. 15 Bom 44, Vazeer Ali* v. *Surya Narain, 1 Mad. L. J. 388, State* v. *Gherkin, 7 Iredell N. C. 206, Blackwell* v. *Lane, 4 Dev & Bat. 113 ; 32 Am. Dec. 675,* approved *Sufiel* v. *Bank of England, 9 Q. B D. 555,* and *Reg.* v. *Asplin, 12 Cox C. C. 391,* explained and distinguished. *Sitaram Krishna* v. *Daji Devaji, I. L. R 7 Bom 418,* dissented from. The test of the materiality of an alteration in a document is not an addition stating a falsehood made expressly or by implication, in order to increase the apparent evidence of its genuineness, but one which alters the legal identity or character of the instrument either in its terms or in the relation of the parties to it. SURENDRA NATH GHOSE *v.* EMPEROR (1910)
I. L. R. 38 Calc. 75

FORM OF DECREE.

See CHARITABLE TRUSTS.
I. L. R. 34 Mad. 406

FORMÂ PAUPERIS.

See PAUPER SUIT.

FRAME OF SUIT.

See MORTGAGE . **I. L. R. 38 Calc. 342**

FRAUD.

See EVIDENCE, ADMISSIBILITY OF.
I. L. R. 38 Calc. 892

See EVIDENCE ACT (I OF 1872), S. 92, PROV I . **I. L. R. 35 Bom. 93**

See EXECUTION OF DECREE.
I. L. R. 38 Calc. 622

See IMMOVEABLE PROPERTY.
I. L. R. 34 Mad 143

See SPECIFIC PERFORMANCE.
I. L. R. 38 Calc 805

——— Ex parte decree procured by fraud—*Jurisdiction of another Court to set aside the ex parte decree—Investigation how far limited.* The defendant obtained an *ex parte* decree at Akyab upon a promissory note against the plaintiff who subsequently applied under s. 108 of the Code of Civil Procedure to set aside the said decree. The *ex parte* decree was set aside and the suit was revived, but at the hearing the plaintiff could not appear and an *ex parte* decree was again passed. The plaintiff then brought a suit in the Court to which the *ex parte* decree was transferred for execution, for a declaration that the said decree was

FRAUD—*concld.*

not binding on him, it being based upon no cause of action and being fraudulent, inasmuch as he did not execute any promissory note in favour of the defendant, or receive any money from him. On an objection by the defendant that the Court had no jurisdiction to enter into the merits of the suit in the Akyab Court, and in any case the only matter that could be investigated was whether the plaintiff had by the action of the defendant been prevented from placing his case properly before the said Court :—*Held,* that the jurisdiction of the Court in trying a suit of this kind was not limited to an investigation merely as to whether the plaintiff was prevented from placing his case properly at the prior trial by the fraud of the defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree. LAKSHMI CHARAN SAHA *v.* NUR ALI (1911)
I. L. R. 38 Calc. 936

FREEDOM OF RELIGION ACT (XXI OF 1850).

See HINDU LAW—APOSTASY.
15 C. W. N. 545

FRESH RULE.

See CRIMINAL REVISION.
I. L. R. 38 Calc. 933

FUTURE MAINTENANCE.

——— assignment of—

See MAINTENANCE ALLOWANCE.
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GANG OF THIEVES.

See PREVIOUS CONVICTIONS, EVIDENCE OF.
I. L. R. 38 Calc 408

GENERAL ACCOUNT.

See PARTNERSHIP . **I. L. R. 34 Mad. 112**

GENERAL CLAUSES ACT (X OF 1897).

——— s. 6, cl. (c)—*Limitation Act (IX of 1908), s. 6, Sch. I, Art. 166—Sale of minor judgment-debtor's property before 1909—Minor's right to apply to set aside sale on attaining majority.* The right which accrued to a minor judgment-debtor under Act XV of 1877 to apply to set aside a sale which took place before the Limitation Act of 1908 came into force upon attaining majority is not taken away by the coming into operation of that Act, that being a privilege which has been preserved by s. 6, cl. (c) of the General Clauses Act. FAZL KARIM *v.* ANNADA MOHAN RAY (1911)
15 C. W. N. 845

——— s. 10—*Civil Procedure Code (Act V of 1908), O. XXI, r. 1—Decree—Payment of money*

GENERAL CLAUSES ACT (X OF 1897) —*concld.*

——— s. 10—*concld.*

ordered in a decree—Payment ordered on a fixed date—Delay in making payment into Court owing to closing of Court—Payment on the opening day—Practice. A decree provided as follows: "The plaintiff should pay, by the 10th day of April 1909, to the defendant R100. If the moneys are not paid by the plaintiff as agreed upon, the property in dispute will remain with the defendants by right of ownership and the plaintiff will have no right of ownership over the same." The plaintiff chose to pay the money into Court, and finding it closed on the 10th, she paid the money on the 14th April 1909, the day on which the Court reopened. A question having arisen whether the payment so made was within the terms of the decree—*Held*, that the payment was properly made, for Order XXI, rule 1 of the Civil Procedure Code, 1908, intended to enact and did enact that payment into Court was a valid compliance with the decree even though the decree directed payment to the decree-holder. WANA MARD RAVJI *v.* NATU WALAD MURHA (1910) **I L. R. 35 Bom 35**

——— s. 27.

See PRACTICE . **I. L R 35 Bom. 213**

GIFT.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 44 (*b*) . **I. L R 35 Bom. 297**

See CONSTRUCTION OF DOCUMENT **I. L R. 33 All. 665**

See HINDU LAW—ENDOWMENT. **I. L. R 33 All. 253**

See HINDU LAW—GIFT. **I. L. R. 34 Mad. 287**

See JOINT TENANCY. **I L. R. 34 Mad. 80**

——— by adoptee—

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——— revocation of—

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——— to a class—

See HINDU LAW—WILL. **I. L. R. 38 Calc. 188**

——— Gift burdened with an obligation —*Alienation by donee—Restrictions on alienation.* When it is doubtful, whether a deed embodies a complete dedication to a religious trust or merely creates a gift of that property, subject to an obligation to perform certain services, the question should be decided by reference to the deed itself. In the former case the property would be inalienable, and in the latter alienable, subject to the obligation, and notwithstanding restrictions as to selling or mortgaging the said property. DASSA RAMCHANDRA *v.* NARSINHA **I. L. R. 35 Bom. 156**

GHARJAMAI.

See HINDU LAW—MAINTENANCE. **15 C. W. N. 205**

GOOD-WILL.

See TRADE-MARK. **I. L. R. 38 Calc. 110**

GOVERNMENT.

——— acquisition by—

See LAND ACQUISITION ACT (I OF 1894), s. 18 . . **I. L. R. 35 Bom. 146**

——— loss to—

See ACTIO PERSONALIS MORITUR CUM PERSONA . **I. L. R. 35 Bom. 12**

——— suit against—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 424 . **I. L. R 35 Bom. 42**

GOVERNMENT DEPARTMENT.

——— *Government department, discretion vested in, by Statute, if arbitrary and uncontrolled—Colourable exercise, amounting to refusal—Court's power to interfere.* The plaintiff, an employee in the Public Service of the State of New South Wales, on his retirement in 1905 became entitled, under s 4 of the Public Superannuation Act of 1903, "to a gratuity not exceeding one month's pay for each year of service from the date of his permanent employment," the gratuity "to be calculated on the average of his salary during the whole term of his employment and to be payable in the case of retirement, after the commencement of the Public Service Act of 1902, only in respect of service prior to such commencement." The Public Service Board awarded him a gratuity based on the average of his salary, reckoning his service, however, up to a certain date in 1895. Plaintiff having asked his service to be reckoned up to the date of the commencement of the Public Service Act in 1902, he was first informed that in respect of that claim no further sum could be paid, but subsequently the Board allowed him one penny for each year of service subsequent to the said date in 1895. No fault was thereby admittedly intended to be found with the manner in which the plaintiff had discharged his duties when in service: *Held*, that the discretion which the Government purported to exercise (through the Public Service Board) was not an arbitrary uncontrolled discretion but a discretion to be exercised reasonably, fairly and justly. An illusory award such as this—an award intended to be unreal and unsubstantial—though made under guise of exercising discretion is at best a colourable performance and tantamount to a refusal by the Board to exercise the discretion entrusted to them by Parliament. WILLIAMS *v* GIDDY (1911) **15 C. W. N. 669**

GOVERNMENT IRRIGATION SOURCE

See THE MADRAS IRRIGATION CESS ACT, s. 2 . . **I. L. R. 34 Mad. 366**

GOVERNMENT OF INDIA ACT, 1858, (21 & 22, VICT., C. 106).

——— ss. 39, 42, 55.

See EXECUTION OF DECREE
I. L. R. 38 Calc. 754

GOVERNMENT OF INDIA ACT, 1859 (22 & 23 VICT., C. 41)

——— s. 1.

See EXECUTION OF DECREE
I. L. R. 38 Calc. 754

GOVERNMENT REVENUE.

——— assignment of—

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS 51, 52 AND 99.
I. L. R. 33 All. 556

GRANTOR AND GRANTEE.

See RENT I. L. R. 38 Calc. 278

GUARDIAN.

1. ——— Hindu widow—*Re-marriage—Guardians and Wards Act (VIII of 1890), s 39—Whether a Hindu widow appointed guardian under the Act loses her right of guardianship on re-marriage—Hindu Widows' Re-marriage Act (XV of 1856), s 3* A Hindu widow who has obtained a certificate of guardianship in respect of the person and property of her infant sons, does not, merely on her re-marriage, lose her right to act as guardian of the minors. GANGA PERSHAD SAHU *v.* JHALO (1911) . I. L. R 38 Calc. 862

2. ——— Appointment of nazir as guardian of the property of the minors by Court—*Minor—Guardians and Wards Act (VIII of 1890), ss 8, 13—Applications by mother and grandmother—Purdanashin Lady—Recording of Evidence* Where a mother and grandmother of two minors separately applied to be appointed guardian of the persons and property of the minors and during the pendency of their applications it was agreed that a certain person should be appointed guardian of the property, but he refused to take up the appointment, the District Judge without holding an enquiry into the respective merits of the applications made an order appointing the Nazir of the Court to be the guardian of the property of the minors: *Held*, that the Court had no power to make an order appointing a guardian except on a substantive application under s. 8 of the Guardians and Wards Act (VIII of 1890), and that the appointment of the Nazir was *ultra vires*. Under s. 13 of the Guardians and Wards Act (VIII of 1890) the Court is bound to hear such evidence as may be adduced in support of or in opposition to the application before passing an order. The mere fact of the mother being a *purdanashin* lady was no obstacle to her being appointed guardian of the property; the safe custody of the property and its due administration could be sufficiently guaranteed by

GUARDIAN—*concld.*

security being taken from the proposed guardian by the Court JAIWANTI KUMRI *v* GAJADHAR UPADHYA (1911) . I. L. R 38 Calc. 783

GUARDIAN AND MINOR.

See CONTRACT ACT (IX OF 1872), SS 10 AND 11 . I. L. R. 33 All. 657

GUARDIAN AND WARD.

See GUARDIANS AND WARDS ACT (VIII OF 1890), S 17 I. L. R. 33 All. 222

GUARDIANS AND WARDS ACT (VIII OF 1890)

——— s. 7—*Appointment of guardian—Welfare of minor—Application for appointment of guardian, if may be summarily rejected—Contents of application—Grounds for dismissal—Malâ fide application—Amendment of petition.* The key-note to the Guardians and Wards Act lies in the introductory words of s 7 that proceedings under this Act are to be taken for the benefit of the minor. If an application is made for an ulterior purpose it ought not to be entertained. Before proceeding with it the Court should under s 11 be satisfied that there is ground for proceeding with the application One of the material facts to be taken into consideration is the cause or causes which led to the making of the application. Where the real object of the application by a husband for appointment as guardian of his minor wife was to recover her from the custody of her father who, on his part, alleged ill-treatment of his daughter by the husband, but this object was not disclosed in the application. *Held*, that it was within the powers of the Judge to dismiss the application summarily on the ground that it did not disclose the cause which led to the making of the application as required by s 10, sub-s (1), cl (*k*) of the Act The Court being satisfied that the application was wholly *malâ fide* and not for the benefit of the minor, it refused permission to the petitioner to amend his petition. SARAT CHANDRA NANDAN *v* GIRINDRA CHANDRA GUIN (1910) . . . 15 C. W. N. 457

——— ss. 8, 13.

See GUARDIAN . I. L. R. 38 Calc. 783

——— s 17—*Guardian and Ward—Considerations by which a court should be guided in the selection of a guardian.* In considering the appointment of a guardian for a minor the proper test is the welfare of the minor. Where the applicant was a distant relation of the husband of a childless widow of some 12 or 13 years of age who was living happily with her father, it was *held* that the father of the minor widow was her proper guardian. *Khudiram Mookerjee* v. *Bonwari Lal Roy, I. L. R. 16 Calc. 584*, referred to TOTA RAM *v* RAM CHARAN (1910) . . . . I. L. R. 33 All. 222

——— s. 17, cl. (2)—*Adopted son minor—Death of adoptive parents—Natural father if may be appointed guardian—Guardian of property of minor*

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— s. 17—*concld.*

appointed executor of same property under father's Will—Probate supersedes guardianship order—Security, inventory, accounts Both the adoptive parents being dead the natural father of the minor adopted son was appointed guardian of his person in preference to the brothers of the adoptive mother and the daughters of the adoptive father *Lakshmi Bai* v *Sridhar Vasudev Takle, I. L R 3 Bom. 1,* referred to. The appellant who had been appointed by the District Judge the guardian of the properties of a minor was required by the Judge to furnish security and to produce an inventory of the minor's properties and accounts within six months During the pendency of the appeal, the appellant having obtained probate of the unadministered effects belonging to the estate of the father of the minor: *Held,* that the properties to which under his father's Will the minor was beneficially entitled having by the grant of probate become legally vested in the executor, no guardian in respect of that property could be appointed, so long as the executorship continued, and the order of the District Judge calling on the appellant to furnish security and file inventory and submit accounts became inoperative upon such grant and should be cancelled GANGAPRASAD BHATTACHARJEE *v* HARA KANTA CHOUDHURI (1910) **15 C W N. 558**

——— s. 39.

See GUARDIAN **I. L. R. 38 Calc. 862**

GUJARAT TALUKDARI ACT (BOM. VI OF 1888).

See LAND REVENUE CODE BOM. ACT V OF 1879), s. 79A **I. L. R. 35 Bom. 72**

——— s. 29 E.—*Talukdari Settlement Officer managing a Talukdar's estate—Creditor submitting his claim—Time taken up before the Talukdari Settlement Officer—Exclusion of time—Limitation Act (XV of 1877)* *B* obtained a decree for money against *G*, a Talukdar, on the 22nd February 1903, and presented his first *darkhast* for execution on the 8th December 1903. On the 21st September 1905, *G*'s estate came by notice to be in the management of the Talukdari Settlement Officer under s. 29B of the Gujarat Talukdars' Act, 1888 *B* submitted his claim to the officer on the 6th March 1906: but it was rejected on the 12th August 1908. *B* then applied to the Civil Court on the 12th March 1909, and sought to bring it within time, by claiming to exclude the period taken up before the Talukdari Settlement Officer:—*Held,* that the period in question could not be excluded in computing the time for the *darkhast,* for s 29E of the Act placed no absolute bar on *B*'s right to apply to the Court for execution by reason of the submission of his claim to the Talukdari Settlement Officer. GANPATSING HIMATSING *v.* BAJIBHAI MAHAMAD (1911) . **I. L. R. 35 Bom. 324**

GUJARAT TALUKDARI ACT (BOM. VI OF 1888)—*concld.*

——— s. 31—*Land Revenue Code (Bom. Act V of 1889)—Talukdari tenure—Wanta land (at Sarsa)—Alienated land—Attachment of income. Wanta* lands are lands held by Rajputs or the representatives of Rajputs who, after the Mahomedan conquest of Gujerath, received one-fourth of the land of certain villages on condition of keeping order in those villages. The lands were held either rent-free or at a small quit-rent. Where *Sarsa Wanta* land, the income of which is attached in execution of a decree is proved to have been entered as alienated land under the Land Revenue Code (Bom Act V of 1889), the Court may presume that it is not land held upon Talukdari tenure in the strict sense of the word. The words "Talukdar's estate" in s. 31 of the Gujerath Talukdars' Act (Bom. Act VI of 1888) are used in a technical sense limited to the Talukdar's interest in the estate held by him by reason of his status as a Talukdar *Khodabhai* v *Chaganlal, 9 Bom. L. R. 1122,* and *Bhachubha* v. *Vela Dhanji, I. L. R. 34 Bom 55,* followed. TALUKDARI SETTLEMENT OFFICER *v.* CHHAGANLAL DWARKADAS (1910) **I. L. R. 35 Bom. 97**

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HABEAS CORPUS.

——— power of High Court to issue writs of—

See CRIMINAL PROCEDURE CODE, S 491. **15 C. W. N. 1053**

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——— evidence of—

See PREVIOUS CONVICTIONS, EVIDENCE OF . . **I. L. R. 38 Calc. 408**

HANDWRITING.

See WILL . . **15 C. W. N. 729**

HEREDITARY OFFICES ACT (BOM. III OF 1874).

——— ss. 10 and 13—*Land Acquisition Act (I of 1894), s. 18—Maharki Vatan land—Acquisition by Government—Award—Compensation—Title by adverse possession against Vatandars—Collector's certificate—Jurisdiction.* Certain lands with buildings thereon having been acquired by Government under the Land Acquisition Act (I of 1894), the Assistant Collector passed an award whereby he awarded, by way of compensation, one sum to the owner of the buildings on the land and another to certain Mahar Vatandars on account of the land being Maharki Vatan. The owner of the buildings having objected to the award, the Assistant Collector at the instance of the objector referred the matter to the District Court under s. 18 of the Act. The District Judge found that the objector had acquired title to the land by adverse possession and thus became entitled to the compensation on

HEREDITARY OFFICES ACT (BOM. III OF 1874)—*concld.*

——— s. 10—*concld.*

account of the land as against the Mahar claimants. Subsequently the Collector forwarded to the District Court a certificate issued under s 10 of the Hereditary Offices Act (Bom Act III of 1874) that the order for the payment of the compensation to the objector should be set aside "in accordance with the provisions of ss. 10 and 13 of the Act." Thereupon the District Judge, holding that he had no jurisdiction to decide whether the property was Vatan or not in the face of the Collector's certificate cancelled his order. The objector having appealed against the said order:—*Held*, restoring the award of the District Court, that an award under the Land Acquisition Act (I of 1894) was not a decree or order capable of execution under the Civil Procedure Code (Act V of 1908) and was therefore not within the purview of s. 10 of the Hereditary Offices Act (Bom. Act III of 1874). *Held*, further, that the award of the District Court, which was the cause of the certificate, made it clear that the Mahar's property had been acquired by the objector by adverse possession before the commencement of the proceedings for the acquisition of the land by Government. *Per Curiam*. Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land. *Nilkanth* v. *The Collector of Thana, I. L. R. 22 Bom. 802; Collector of Thana* v. *Bhaskar Mahadev, I. L. R. 8 Bom. 264; Rachapa* v. *Amingovda, I. L. R. 5 Bom. 283*, referred to. LADDHA EBRAHIM AND CO. *v.* THE ASSISTANT COLLECTOR, POONA (1910)
I. L. R. 35 Bom. 146

HEREDITARY VILLAGE OFFICES ACT (MAD. III OF 1895).

——— s. 3—'*Other offices,' meaning of.* The words 'other hereditary village offices' in cl. 3 of s. 3, Mad Act III of 1885 do not mean offices of a description different from those referred to in cls (*1*) and (*2*) of the section but offices other than those in the localities dealt with by those clauses. A suit for the recovery of the office of karnam in an inam village falls within cl. (*3*) and not cl. (*1*) of s. 3 of the Act and is not cognisable by the civil courts. AUDIRAZU VEERAYYA *v.* AUDIRAZU SANGAYYA (1910) . . **I. L. R. 34 Mad. 177**

HIGH COURT, JURISDICTION OF.

. . *See* CRIMINAL REVISION.
I. L. R. 38 Calc. 933

See DISPUTE RELATING TO LAND.
I. L. R. 38 Calc. 24

See EXTRADITION.
I. L. R. 38 Calc. 547

.. *See* LAND ACQUISITION.
I. L. R. 38 Calc. 230

HIGH COURT, JURISDICTION OF —*concld.*

——— to re-instate legal practitioner after disbarment—

See MUKTEAR . **I. L. R. 38 Calc. 309**

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I. L. R. 38 Calc. 335

HIGH COURTS ACT.

See CHARTER ACT (24 & 25 VICT., c. 104).

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HINDU LAW.

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HINDU LAW—ADOPTION.

1. ——— Payment of money to adoptive widow by way of inducement to her to adopt a particular boy—*Hindu Law—Payment is a bribe—Gift by adoptee in consideration of sum paid by natural father—Gift invalid—Revocation of gift.* *C*, the natural father of *N*, paid a sum of R8,000 to *B*, a widow, as an inducement to her to adopt *N*. After the adoption *B* conveyed by way of gift to *C* some lands at Chinchwad and got them transferred to his name. Later on, *N* conveyed in gift the lands in dispute, which formed part of the property belonging to his adoptive father, to his natural brother (the defendant) in consideration of the payment of R8,000 made by *C* to *B*, in exchange for the lands at Chinchwad, and also having regard to the benefit he had derived from his adoption. After the death of *N*, his sons (the plaintiffs) challenged the gift and sued to recover possession of the lands from the defend-

HINDU LAW—ADOPTION—*contd.*

ant :—*Held*, that the transaction amounted to a mere gift which was not supported by consideration; since the payment of Rs8,000 to *B* was vitiated by the fact that it was in the nature of a bribe and as such was illegal according to Hindu Law; and even if it be regarded as a debt contracted by *C*, it could not bind *N*, *first*, because it was contracted for an illegal purpose; and, *secondly*, because, *N* had by his adoption ceased to be *C*'s son at the date of his gift to the defendant, was under no pious obligation to satisfy *C*'s debts. *Held*, further, that even if the deed of gift be regarded as supported by valuable consideration, it could not bind the interest of the plaintiffs, inasmuch as the property conveyed formed part of the joint ancestral estate in which they took a vested interest by their very birth *Held*, also, that if the transaction be regarded as one supported by valuable consideration on account of exchange of lands at Chinchwad, it could only amount to a sale of the property, and even then it was not competent to *N* to sell joint ancestral property to the detriment of his sons, except for an antecedent debt which had been contracted for a purpose, neither illegal nor immoral *Per Curiam* Where on a Hindu's death an adoption is made by his widow, it must be made by her, without any coercion, free from any corrupt motive, and with an eye solely to the fitness of the boy to be adopted to fulfil the religious and secular duties binding on a son That object is likely to be frustrated, if she is induced to adopt a boy out of greed for money and pecuniary benefit to herself If she is so induced, the money paid to her is a bribe, which is condemned by all Smriti writers as an illegal payment The texts of Hindu Law showing that a gift once made cannot be resumed if it is to a benefactor or to a father, apply only as between the donor and the donee and relate to property which it is competent for the donor to give away. They cannot affect the joint ancestral estate of a Hindu and his sons Their rights and liabilities are regulated by special texts dealing with that estate; and such of these special texts as relate to gift form exceptions to the general texts on the subject. SHRI SITARAM PANDIT *v.* SHRI HARIHAR PANDIT (1910) . **I. L. R. 35 Bom. 169**

2. ——— **Prior right of adoption as between elder and younger widows**—*Anumatipatra, construction of—Simultaneous or successive adoption.* Where the deceased had executed an *anumatipatra* in these terms —"In favour of the first wife, *S. B. S. D*, and the second wife *S. D.* . . . giving permission that when I shall be no more, each of my two wives shall be at liberty to act according to their own religious tenets by adopting three sons successively, that is one after another" :—*Held*, that the effect of such an instrument was not to sanction a simultaneous adoption, but to give a power of adoption to the two widows successively. That this being so, the elder widow had the prior right to exercise the power of adoption and that the younger widow had no right to adopt before the elder widow had exhausted her right, or refused to use it. *Rakhmabai* v. *Radhabai*, *5 Bom. H. C. (App.) 181*, followed. *Amava* v. *Mahadgauda*, *I. L. R. 22 Bom. 416*, *Mondakini Dasi* v. *Adinath Dey*, *I L R 18 Calc. 69*, and *Akhoy Chunder Bagchi* v *Kalapahar Haji*, *I. L R. 12 Calc. 498 : L R. 12 I. A. 198*, referred to. BIJOY KRISHNA KARMAKAR *v.* RANJIT LAL KARMAKAR (1911) . **I. L. R. 38 Calc. 694**

HINDU LAW—ALIENATION.

1. ——— *Absolute estate—Defeasance—Absolute estate cut down to life estate.* By a razinama filed in Court it was agreed that certain properties should be held and enjoyed in common by *R* and *P* and that in the event of *R* becoming issueless the entire properties should belong to *P*. *R* having subsequently sold the properties to *L*, died issueless; *Held*, that the alienation by *R* in favour of *L* was invalid beyond the lifetime of *R* *Bhoobun Mohini Debya* v. *Hurrish Chunder Chowdhry*, *L R. 5 I. A. 138*, relied on. *Kristoromoney Dossee* v. *Maharajah Nerendro Krishna Bahadur*, *L. R. 16 I. A. 40*, relied on LAKSHMINARAYANA NAINAR *v.* VALLIAMMAL (1910) **I. L. R. 34 Mad. 250**

2. ——— *Legal necessity, how to be made out—Onus of proof of legal necessity as affected by lapse of time—Court of Appeal, power of, to make any order to meet justice Civil Procedure Code (Act V of 1908), O. XLI, r. 33.* A property known as *taluk C* belonged to *G*, a Hindu. After *G*'s death there was litigation regarding the succession *D*, the father of the plaintiff, *T C*, was a party in that litigation. The mother of *G* was held entitled to succeed. *D* then brought a suit claiming the estates and sought to set aside an alienation by *G*'s mother of a portion of the estate in favour of *M G* The Judicial Committee held finally in that suit that *D*'s suit was barred by *res judicata*, and refused to make any declaration regarding the alienation in the life-time of *G*'s mother. Before her death, *G*'s mother sold the entire estate *C* to *M G*. After her death, *T C*, the son of *D*, and two other persons sued *M G* for setting aside the alienations on the allegation that *T C* was the eldest male member in the eldest line, and as such, was entitled to the property by virtue of the rule of lineal primogeniture governing succession in the family. The plaintiffs prayed therein for a decree in favour of *T C* or, in the alternative, in favour of one or more of the plaintiffs. The first Court decreed the claim of *T C*. On appeal to the High Court by the defendant :—*Held*, that, if one or other of the plaintiffs were entitled to succeed the suit should not be dismissed simply, because the first of the plaintiffs alone had failed to make out a title, particularly when by so dismissing the suit, the right of the co-plaintiffs (who, if the first plaintiff were not joint with the last male holder would, on failure of the first plaintiff's case, be entitled) would be thereby barred; and that, in such a case, the Appellate Court could exercise the power provided for in the Code of Civil Procedure, O. XLI, r. 33. *Held*, also

HINDU LAW—ADOPTION—*concld.*

HINDU LAW—ALIENATION—*contd*

that lapse of time did not affect the question of onus of proof regarding legal necessity, except in so far as it might give rise to a presumption of acquiescence or save the alienee from adverse inference arising from the scanty proof which might be offered *Held*, further, that in order to justify legal necessity, it must be shown that the expenses could not have been met from the income of the property in the widow's hands, and that they were reasonable *Held*, lastly, that payment of full value for the property did not of itself justify a sale by a Hindu widow in the absence of legal necessity. RAVANESHWAR PRASAD SINGH *v.* CHANDI PRASAD SINGH (1911)
I. L. R. 38 Calc. 721

3. ——— *Mitakshara—Joint Hindu family—Alienation by one member without the consent of a co-parcener—Legal necessity—Right of subsequently born co-parcener to impugn the transaction* Where an alienation of ancestral property is invalid as having been made without legal necessity by one member of the co-parcenary without the consent of the rest, it is open to co-parceners to object to such alienation notwithstanding that they were born subsequently thereto. *Kali Shanker* v. *Nawab Singh, I. L. R. 31 All. 507*, referred to. *Chuttan Lal* v. *Kallu, I. L. R. 33 All. 283*, distinguished. TULSHI RAM *v* BABU (1911)
I. L. R. 33 All. 654

4. ——— *Trustees of temple, power of, to grant permanent lease of trust property.* The grant of a permanent lease of temple property by the trustee is *primâ facie* in excess of the powers of such trustee. Special circumstances of necessity may justify such alienation. *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo, 13 Moo. I. A. 270*, followed. *Narasimhachari* v. *Gopala Iyengar, I. L. R. 28 Mad. 391*, referred to. There is no distinction in this respect between a religious institution like a temple and a charitable foundation. The powers of the trustee of a temple are analogous to those of the manager of an infant heir. *Hanuman Pershad's Case* referred to in *Konwar Doorga Nath Roy* v. *Ramachunder Sen, L. R. 4 I. A. 52*, referred to. The requirements of daily worship, of buildings suitable for the carrying out of such worship, and of performance of festivals are among the purposes for which the trustee of a temple may alienate the *corpus*, in the absence of other reasonable means of providing for such needs. In the case of such alienations, the alienee will be protected, if after proper enquiries he is satisfied of the existence of such necessity. SREEMUTH DEVASIKAMONEY PANDARASANNADHI *v.* PALANIAPPA CHETTIAR (1910) . . . . I L. R. 34 Mad. 535

5. ——— *Widow, alienation by—Enquiry to be made by purchaser as to necessity of transaction—What is sufficient enquiry.* Where it appeared that the purchaser of immoveable properties from a Hindu widow did not enquire from the creditors mentioned in the sale-deed as those who were to be paid off out of the consideration-money as to the necessities of the transaction, but satisfied himself with an enquiry merely from the widow herself, and it was found that the statement regarding the payment to the alleged creditors was false · *Held*, that the purchaser had not made the necessary enquiries as laid down in *Hunooman Pershad* v. *Mussit Babooee Munraj Koonweree, 6 Moo. I. A. 393*, and the sale could not be supported. JANHABI *v.* BULBHADRA SUAR (1911) . . . . 15 C. W. N. 793

HINDU LAW—ALIENATION—*concld.*

HINDU LAW—CONVERSION.

——— *Change of religion—Effect of conversion of a member of Joint Hindu family to Muhammadanism—Regulation VII of 1832, s. 9—Act XXI of 1850—Compromise—Effect of compromise entered into by members of family in settlement of disputes as to rights to property—Act XIV of 1859, s. 1, cl. 12—Act No. IX of 1871, Sch. II, Art 142—Act No. XV of 1877, Sch, II, Art. 141—Suit by reversioner.* By Bengal Regulation VII of 1832, s. 9, and Act XXI of 1850 the Legislature virtually set aside the provisions of the Hindu Law which penalize the renunciation of religion, or exclusion from caste. Where, therefore, in a joint Hindu family consisting of a father and son, the father was converted to Muhammadanism in 1845. *Held* (reversing the decision of the High Court), that by the father's abandonment of Hinduism the son did not acquire any enforcible right to his father's share in the joint family property which he could either assert himself, or transmit to his heirs for enforcement, in a British Court of justice *Semble* Whatever right the son acquired under the Hindu law to the share of his father came into existence on the conversion of the latter in 1845; and no suit could have been brought (even if Regulation VII of 1832 and Act XXI of 1850 had permitted it) to enforce that right after the lapse of 12 years from the time the cause of action arose (s 1, cl. 12 of Act XIV of 1859): and nothing in Art. 142 of Act IX of 1871, or in Art 141 of Act XV of 1877 could revive a right which had already become barred. *Hari Nath Chatterjee* v *Mothur Mohun Goswami, I. L. R. 21 Calc 8. L. R. 20 I A. 183*, referred to. After the death of the father (who survived the son) and their widows a compromise was in 1860 effected between the two daughters of the son on the one side and the grandson of the father on the other, under which an 8½-anna share was allotted to the daughters and a 7½-anna share to the grandson. The 8½-anna share eventually on the death of the survivor of the two daughters in 1899, devolved upon the respondents, her sons. In a suit by them in 1904 for possession of the 7½-anna share allotted to the grandson, against the appellants who were his successors in title as transferees from him or his heirs. *Held* (reversing the decision of the High Court), that the compromise of 1860 was a family arrangement by the members then claiming title to the property in settlement of their disputes, "each one relinquishing all claim in respect of all

HINDU LAW—CONVERSION—*concld.*

property in dispute other than that falling to his share, and recognising the right of the others as they had previously asserted it to the portion allotted to them respectively" [See *Lalla Oudh Beharee Lall* v *Ranee Mewa Koonwar*, *3 Agra H C. 82, 84*] The compromise was therefore binding on the respondents The true test to apply to a transaction which is challenged by reversioners as an alienation is whether the alienee derives title from the holder of the limited interest or life-tenant, which in this case the predecessor in title of the appellants did not do · for the compromise here was "based on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledges and defines what that title is" [See *Rani Mewa Kunwar* v. *Rani Hulas Kunwar*, *L R I I A 167.* KHUNNI LAL *v.* GOBIND KRISHNA NARAIN (1911) **I. L. R. 33 All. 356**

HINDU LAW—DEBT.

1. ——— **Legal necessity**—*Mitakshara —Joint Hindu family—Debt—Money borrowed to comply with a decree for pre-emption in favour of the father.* A decree for pre-emption, providing that the pre-emptor shall acquire the property if he pays the amount mentioned therein, but otherwise his suit will be dismissed, is a debt such as will support a bond given by the father of a joint Hindu family to raise money for its satisfaction NATHU *v.* KUNDAN LAL (1910) **I. L. R. 33 All. 242**

2. ——— *Widow—Money borrowed for legal necessity—Construction of well—Feast on return from pilgrimage—Daughter's marriage.* Money borrowed to defray the expenses of the marriage of the daughter of a Hindu widow in possession of her husband's property, is money borrowed for legal necessity, but a feast given on return from pilgrimage is not so connected with the pilgrimage as to justify its allowance as money expended for legal necessity. Expenses incurred in the construction of a well may be a legal necessity if it be proved to be for the benefit of the estate. MAKHAN LAL *v.* GAYAN SINGH (1910) **I. L. R. 33 All. 255**

3. ——— *Debts—Son's liability for father's debt—Money borrowed to defend a suit for defamation not an immoral debt Held,* that under the Hindu Law money borrowed by the father to defend a suit for defamation is a debt for which a Hindu son and grandson are liable. SUMER SINGH *v.* LILADHAR (1911) **I. L. R. 33 All. 472**

HINDU LAW—ENDOWMENT.

1. ——— **Alienation of endowed property**—*Power of shebait to grant lease in perpetuity at a fixed rent—Limitation Acts (XV of 1877), Sch. II, Art. 134 and (IX of 1908), Sch. I, Art. 134—Bonâ fide Purchaser—Purchaser of absolute title—Privy Council, practice of—Review of former decision.* In a suit brought by the Raja

HINDU LAW—ENDOWMENT—*contd.*

of Panchakote as the shebait of certain Hindu deities to recover possession of *debutter* property, which had been alienated, more than 12 years before the institution of the suit, by the plaintiff's predecessor in title, who had granted a mokurari lease of the property in consideration of a fixed rent, and payment of a fine equal to two years' rent *Held* (reversing the decision of the High Court), that the suit was not barred by limitation under Art 134 of Sch II of Act XV of 1877, the lessees (defendants) not being the purchasers of an absolute title, and therefore not "purchasers" within the meaning of that article. *Abhiram Goswami* v *Shyama Charan Nandi*, *I. L R 36 Calc. 1003 L. R 36 I. A 148*, followed. The Judicial Committee of the Privy Council are averse from reviewing, on an *ex parte* application, a considered decision in a former case delivered after full argument ISHWAR SHYAM CHAND JIU *v* RAM KANAI GHOSE (1911) . . **I. L. R. 38 Calc. 526**

2. ——— **Proof that grant was for bonâ fide public religious purpose**—*Debutter —Dealings with the property and income—Separate collection by persons jointly interested as shebaits—Bequest of properties both endowed and secular—Breaches of trust—Alienation of property and diversion of income—Evidence—Admissibility—Copy of sanad—Decision of revenue authorities in lakheraj resumption proceeding under Reg II of 1819—Rent decrees recovered on behalf of Thakur—Evidence Act (I of 1872), s 13—Shebait's line, failure of—Reverter of office to donor.* In order to prove that certain lands form the subject of a valid public endowment it must be established that an absolute grant was made with the intention that the profits should be applied for the services of the idol; and to establish the *bonâ fide* character of the endowment, it must be proved that the profits have since been so applied, and the members of the family of the founder have not treated the property as one, the profits of which were mainly intended to be applied for their benefit *Kasheshuree Dassee* v. *Krishna Kaminee Debia*, *2 Hay's Report 557*, *Gunga Narain Sircar* v *Brindabun Chandra Kur Chowdhry*, *3 W R 142*, *Ram Pershad Das Adhikaree* v. *Sri Huree Doss Adhikaree*, *18 W R 399*, *Sonatun Bysack* v. *Srimati Jugut Soondari Dassi*, *8 Moo I. A 66*, *Ashutosh Dutt* v *Doonga Charan Chatterjee*, *I. L R 5 Calc. 438*, referred to A document which was found to be a copy of a *sanad* of 1775 which itself did not purport to be the deed of grant by which the endowment was constituted, but merely referred to the fact that the grant had been made and was recognised by the executive authorities was properly admitted in evidence on proof of proper custody. The statement in *Budh Singh Dhudhuria* v. *Niradbaran Roy*, *2 C L J 431*, that the question whether the lands had been absolutely dedicated for a public charitable purpose was wholly foreign to the enquiry and indeed beyond the jurisdiction of the revenue authorities, in a proceeding under Reg. II of 1819, goes too far. Where the decision in such a proceeding that certain lands are rent-free proceeded on grounds based

HINDU LAW—ENDOWMENT—*concld.*

on allegations that the lands were dedicated as public *debutter*, the decision would not be conclusive evidence of the validity of the grant, but would at all events be evidence to show that a claim to hold the land rent-free on that ground was put forward at that time by the *shebait* and was on that account admitted by the revenue authorities When the family of the *shebait* appointed by the founder died out, the *shebaitship* would, in the natural course, revert to a member of the family of the original grantor *Sital Das Babaji* v. *Protap Chandra Sarma, 11 C. L. J 2*, referred to. The mere fact that two branches of the family of the *shebait* each collected a half share of the rents of the endowed property did not prove that the property was treated as secular property. Rent decrees showing recovery of such half shares of the rent from the tenants on behalf of the Thakur were properly admitted in evidence under s. 13 of the Evidence Act The fact that a *shebait* devised the endowed property along with his secular properties went no further than to indicate that he purported to bequeath his right to the *shebaitship* of that property to his widow and not the property itself. Alienation of the endowed property recently made by the *shebaits* were held to amount to instances of abuse of trust by the *shebaits* which would not by themselves be sufficient to destroy the *debutter* character of the land if otherwise established Unlawful diversions of the profits from the services of the Thakur to other purposes in recent years also did not affect the validity of the grant as *debutter*. *Held*, on the entire evidence, that the endowment in this case was not of a private character and that the members of the family of the original grantor had not resumed the property endowed and converted it into secular property MADHUB CHANDRA BERA *v* SARAT KUMARI DEBI (1910) . . . . . **15 C. W. N. 126**

3. ——— **Gift in favour of an idol which is to be subsequently consecrated**—*Possession given to manager* By a deed of gift certain zamindari property was expressed to be given to the idol, which was not at the time of execution in existence, and possession of the property was made over to a certain person as *pujari* *Held*, that the deed was valid and created a trust in favour of the idol. *Mohar Singh* v. *Het Singh, I. L. R 32 All 337*, and *Bhupati Nath Smritiurtha* v *Ram Lal Moitra, I. L R. 37 Calc 128*, referred to CHATARBHUJ *v.* CHATARJIT (1911) . **I. L. R. 33 All. 253**

4. ——— **Gift void for uncertainty**—*Gift in favour of "the Thakurji in his Thakurdwara"—No temple built or idol installed Held* that a dedication, not to any particular deity which was subsequently to be installed in a temple, but to "the Thakurji in his Thakurdwara" without mentioning the particular Thakurji to whom the property was dedicated, was void for uncertainty. *Bhupati Nath Smrithirtha* v. *Ram Lal Moitra, I L. R. 37 Calc. 128, Mohar Singh* v. *Het Singh, I L. R. 32 All. 337*, and *Chatarbhuj* v. *Chatarjit, I. L. R. 33 All. 253*, distinguished. PHUNDAN LAL *v.* ARYA PRITHI NIDHI SABHA (1911) **I. L. R. 33 All. 793**

HINDU LAW—GIFT.

——— **Gift of land by daughter for deceased father's spiritual benefit**—*When valid* A Hindu widow who succeeded to the property of her deceased father made a gift of a very small portion of that property at the time of performing her father's sraddha ceremony on the occasion of a peculiarly holy event among Hindus: *Held*, that the gift was in accordance with Hindu ideas as regards the daughter's duty in connection with the performance of a father's sraddha on such an occasion and cannot be impeached by the reversioners It cannot be laid down as a rule that to justify the alienation the expenditure should be for a spiritual necessity It is sufficient if the gift or expenditure have reference to the spiritual needs of the father or husband whose property is taken VUPPULURI TATAYYA *v* GARIMILLA RAMAKRISHNAMMA (1910) . **I. L. R 34 Mad. 288**

HINDU LAW—GRANT.

——— *Property granted to owner of office when partible—Conduct of parties in determining nature of property—Acquisition of property by holder of office—Charities, devolution of right to manage—Grant, construction of* When property is granted to the holder of an office, but the grant does not state that it was given for the maintenance of the office or to the grantee as such holder, the grant will be deemed to be a personal grant and will be ordinary partible property. The conduct of a person who deals with property as if it belonged to himself and his undivided coparceners will be strong and cogent evidence that the property belongs to the co-parcenary The recognition by Government and public officers of such property as ordinary partible property will be strong evidence of its partibility. It is competent to holders of offices to acquire properties for the benefit of themselves and their descendants and there is no presumption that such acquisitions are for the benefit of the office, where it is not shown that such properties were treated as attached to the office. The right of management of family properties devoted to charities ordinarily descends to the heirs of the donor except in the few cases where the office is descendible to a single heir. According to well-established usage and custom, the enjoyment of the office of manager is divided between the different members or branches of the divided family *Ramanathan Chetty* v *Muruyappa Chetty, I. L. R 27 Mad 192*, referred to. SETHURAMASWAMIAR *v* MERUSWAMIAR (1909) **I. L. R. 34 Mad. 470**

HINDU LAW—INHERITANCE.

1. ——— **Scheme of devolution contrary to Hindu Law**—*Inheritance—Document attempting to alter the mode of Succession—Instrument laying down rules to secure succession in direct male line for an indefinite period, and without gift to any person—Succession on failure of direct male issue—Exclusion of female heirs—Dayabhaga Law.* Two brothers *K* and *N*, subject to the Dayabhaga School of Hindu Law, executed, on 28th March 1866, a document whereby after reciting

HINDU LAW—INHERITANCE—*contd.*

that "whereas body is mortal it is impossible to say what may befall at what time, and as ruin may ensue from disputes relating to the shares arising in future among son, daughter, daughter's son and childless widow unless some rules are regularly framed, and it has accordingly become necessary to prescribe a set of rules in that behalf, and hence the rules mentioned below are laid down . these shall become operative and come into force on our death," they purported to provide for the permanent devolution of their respective properties in the direct male line, including adopted sons, with the condition that in case of failure of lineal male heirs in one branch the properties belonging to that branch should go to the other, subject to the same rule, and only in the absence of male descendants in the direct line in either branch were the properties to go to female heirs and their descendants. *K* died in 1868 leaving a son *A*, a daughter *D*, his brother *N* and their mother *C*. *A* died in 1872 without any issue, and *C* in March 1901 The plaintiffs (appellants), who were the sons of *D*, instituted this suit on 29th July 1901, against *N*, claiming as next reversioners to *A* their maternal uncle, the properties which originally belonged to *K* and which had since come into the possession of *N* the defendant. *N* died shortly after the suit was brought, his sons (the respondents) being substituted for him on the record Their contention was that under the instrument of 1866 the properties in dispute passed on the death of *A* to *N* and on his death to them. The High Court (reversing the decision of the Subordinate Judge) was of opinion, that in the circumstances that had actually happened, *A* under the document of 1806 had, in the properties in suit, an absolute estate defeasible in case of death without male issue, and as he died without male issue the heirs of *K* (the respondents) would succeed. *Held* (reversing that decision), that the clear intention of the instrument of 1866 was to vary the rules of Hindu Law and to control the devolution of the properties until the indefinite failure at some remote period of the male line of *K* and *N*; and that such an attempt to alter the mode of succession was, on the principles laid down in the case of *Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore*, *9 B. L. R 377 L. R. I. A. Sup. Vol. 47*, illegal and void. Throughout the instrument there was no indication of an intention to make a gift to any person: and there was no warrant for the contention that there was a devise in favour of *A* with a gift over to *N*, his uncle. The question was not whether the gift over was good in the event which happened, but whether it was good in its creation. PURNA SHASHI BHATTACHARJI *v.* KALIDHAN RAI CHOWDHURI (1911) I. L. R. 38 Calc. 603

2. ——— **Paternal uncle's grandson**—*Mitakshara—Inheritance—Paternal uncle's widow.* Among Hindus in the Bombay Presidency governed by the law of the Mitakshara, a paternal uncle's grandson is to be preferred as an heir to a paternal uncle's widow. KASHIBAI *v.* MORESHVAR RAGHUNATH (1911) . I. L. R. 35 Bom. 389

HINDU LAW—JOINT FAMILY.

1. ——— *Joint Hindu family—Son's liabilities for father's debts—Mortgage—Suit for sale—Transfer of Property Act (IV of 1882), s 85—Property sold in execution of decree for sale—Purchase by mortgagee decree-holder* In execution of a decree for sale upon a mortgage of joint family property executed by the head of a Hindu joint family certain property was brought to sale and purchased by the mortgagees. A member of the family (great grandson of the original mortgagor) sued the mortgagees for redemption upon the ground that the mortgagees at the date of the suit had been aware of his existence and had not impleaded him *Held*, that the plaintiff's suit would not lie on this ground alone, and that his position was not affected by the fact that the mortgagee had himself purchased the mortgaged property. *Debi Singh* v. *Jia Ram*, *I. L. R. 25 All 214*, followed *Ram Prasad* v. *Man Mohan*, *I. L R. 30 All. 256*, dissented from. *Lal Singh* v. *Pulandar Singh*, *I. L. R. 28 All. 182*, referred to. BALWANT SINGH *v.* AMAN SINGH (1910) . . . . I. L. R. 33 All. 7

2. ——— *Joint family manager of—For what purposes managing member may contract debts binding on co-parceners—Family necessity—Marriage of son a necessary purpose for which manager may bind joint family.* The marriage of a member of the co-parcenary is a family purpose; and where it is reasonably necessary on the part of a prudent manager to borrow money for such purpose, the transaction will bind the co-parceners whether they are Sudras or belong to the twice-born classes. Marriage is one of the necessary samskaras or religious rites, in the case of Sudras, as well as the twice-born classes The necessity, which will justify an alienation by the manager is not to be understood in the sense of what is absolutely indispensable but what according to the notions of a Hindu family would be regarded as reasonable and proper. *Govindarazulu Narasimham* v *Devara Bhotla Venkata Narasayya*, *I. L R. 27 Mad 206*, dissented from. The ceremonies for the performance of which immoveable properties can be alienated by the manager do not include only those for the mere performance of which forfeiture of caste is the penalty. KAMESWARA SASTRI *v.* VEERACHARLU (1910) I. L. R. 34 Mad. 422

3. ——— **Joint family property**—*Mortgage by father alone—Subsequent sale by father to a third party—Suit by mortgagees for sale—Competence of purchaser to rely on invalidity of mortgage* The head of a joint Hindu family mortgaged in 1886 property belonging to the joint family, but neither for legal necessity nor to pay an antecedent debt. In 1888 the mortgagor sold the same property to a third person. The purchaser remained in poss-

HINDU LAW—JOINT FAMILY—*contd.*

ession for more than twelve years, when the mortgagees instituted a suit for sale on their mortgage *Held*, by RICHARDS, *C.J*, and BANERJI, *J*, that in view of the fact that the purchaser had acquired a title to the property by adverse possession as against all the members of the family, it was open to him, notwithstanding that his title was originally acquired from the mortgagor alone, to set up as a defence the invalidity of the mortgage *Per* CHAMIER *J*, that according to the ruling of the majority of the Full Bench in *Chandradeo* v *Mata Prasad, I L R. 31 All 176*, the mortgage made by the father alone was void, and, this being so, it was open to the purchaser, who was in possession of the property to rely upon its invalidity, whatever, the weakness of his own title might be *Chandradeo* v *Mata Prasad, I. L R 31 All. 176*, *Balgobind Das* v. *Narain Lal, I L R 15 All 339*; *Brijbasi Lal* v. *Gopal Das, All Weekly Notes (1908) 200*; *Kali Shankar* v. *Nawab Singh, I L. R. 31 All. 507*, and *Bhagirathi Misr* v *Sheobhik, I L. R 20 All. 325*, referred to MUHAMMAD MUZAMIL-ULLAH *v* MITHU LAL (1911) **I. L. R. 33 All. 783**

4. ——— *Mitakshara—Joint family property sold in execution of decree on mortgage executed by managing member—Suit by other members for redemption—Transfer of Property Act (IV of 1882), s 85—Parties—Representative capacity of managing member.* Although the manager of a Joint Hindu family is not as a rule entitled to sue or liable to be sued on behalf of the family—*Padmakar Vinayak Joshi* v. *Mahadev Krishna Joshi, I. L. R. 10 Bom 21*, and *Kashi Nath Chimnaji* v. *Chimnaji Sadashiv, I L. R. 30 Bom. 477*—nevertheless in certain circumstances the whole family may be bound by the result of suits brought by or against the manager, notwithstanding that some members of the family were not made parties thereto *Balwant Singh* v. *Aman Singh, I, L. R 33 All 71*; *Debi Singh* v. *Jia Ram, I. L R. 25 All. 214*, *Sundar Lal* v. *Chhitar Mal., 3 All L. J. 644* 4 *All L J 17*, *Dhurm Dass Pandey* v *Mussumat Shama Soondri Dibiah, 3 Moo. I. A 229*; *Hari Saran Moitra* v. *Bhubaneswari Debi, I. L R. 16 Calc. 40*, *Narayan Gop Habbu* v. *Pandurang Ganu, I L R 5 Bom 685*, *Jogendro Deb Roy Kut* v *Funindro Deb Roy Kut, 14 Moo. I A 367*; *Bissessur Lal Sahoo* v *Maharajah Luchmessur Singh, L R. 6 I A 233* 5 *C L. R. 477*, *Ram Krishna Narayan* v. *Vinayak Narayan, 12 Bom. L R 219*, and *Gan Savant Ba Savant* v. *Narayan Dhond Savant, I L R 7 Bom 467*, referred to JADDO KUNWAR *v.* SHEO SHANKAR RAM (1910) . . **I L R. 33 All. 71**

5. ——— *Mitakshara—Joint family property—Mortgage by father—Sons not made parties to suit for sale on mortgage—Sale under decree—Suit by sons to redeem their interests* Where ancestral property belonging to a joint Hindu family has been sold in execution of a decree for sale on a mortgage executed by the father, the sons cannot maintain a suit for redemption of their interests in the property sold upon the ground solely that they had not been made parties to the suit of the mortgagee, nor is their position affected by the fact that the auction-purchaser is the mortgagee *Debi Singh* v. *Jia Ram, I. L. R. 25 All. 214*; *Lal Singh* v *Pulandar Singh, I L R. 28 All 182*, and *Balwant Singh* v. *Aman Singh, I. L R 33 All 7*, followed *Ram Prasad* v. *Man Mohan, I L R 30 All 256*, dissented from. *Ram Nath Rai* v. *Lachhman Rai, All Weekly Notes (1899) 27*, referred to. KEHRI SINGH *v* CHUNNI LAL (1911) . . . **I. L. R. 33 All. 436**

6. ——— *Alienation of family property—Right of subsequently born member of family to object to alienation Held*, that a member of a joint Hindu family who was born after the alienation of the family property by another member of that family cannot question the validity of that alienation. *Chattarpal Singh* v *Natha, All. Weekly Notes (1906), 26*, followed *Hurodoot Narain Singh* v *Beer Narain Singh, 11 W R. 480*, and *Bunwari Lal* v. *Daya Shunkar, 13 C. W. N. 815*, distinguished. CHUTTAN LAL *v* KALLU (1910) **I. L. R 33 All. 283**

7. ——— *Joint family property—Separate property—Burden of proof—Nucleus—Presumption* It is necessary to establish the existence of a nucleus of joint family property before the property in the possession of any one member can be presumed to be joint family property. There is no presumption that a Hindu family has any joint property. *Taruck Chunder Totaddar* v. *Joodhesteer Chunder Koondoo, 19 W. R. C R. 178*, dissented from. *Moolji Lila* v. *Gokuldas Vulla, I. L. R. 8 Bom. 154*, *Toolseydas Ludha* v. *Premji Tricumdas, I. L. R. 13 Bom. 61*, *Dwarka Prasad* v. *Jamna Das, 13 Bom L R 133*, followed. *Lal Bahadur* v *Kanhaiya Lal, I. L. R 29 All. 244*, referred to. RAM KISHAN DAS *v* TUNDA MAL (1911) . . . **I. L. R. 33 All 677**

HINDU LAW—JOINT FAMILY—*concld.*

HINDU LAW—MAINTENANCE.

——— **Gharjamai, if may claim maintenance**—*Separate maintenance, when may be allowed—Implied agreement to maintain son-in-law —Pleadings and proof difference between, if fatal—Express contract set up and circumstances stated and only implied contract proved—Cross-objections, if may be received out of time—Civil Procedure Code (Act V of 1908), O XLI, r 2 —Limitation Act (IX of 1908), s 5* Where a plaintiff claimed maintenance as a *gharjamai* stating the circumstances under which the claim arose and also set up an express contract, the Court below, while disbelieving the story of express contract, gave a decree on the ground of implied contract inferred from facts proved:—*Held*, that there was no such variance between pleading and proof as to contravene the rule that the plaintiff shall not succeed on a case not made in his plaint The institution of *gharjamai* is of recent origin and may have owed its origin to the system of Putrika-putra, and the mere fact that there is no provision in the texts of Hindu Law relating thereto does not imply that the *gharjamai* is not entitled to maintenance.

HINDU LAW—MAINTENANCE—*concld.*

Although an ante-nuptial agreement on the part of the husband not to remove his wife from her father's house may not be enforceable as opposed to the rules of Hindu Law and to public policy, if the son-in-law is willing to abide by the arrangement, there is nothing in Hindu Law or in public policy to render an agreement on the part of the father-in-law to maintain him unenforceable *Semble* A *ghar jamai* may be included in the term "poor dependent" declared by Manu to be entitled to maintenance. *Held*, that in the circumstances of the case where it was evident that an order directing the son-in-law to reside as a member of the mother-in-law's family might lead to constant disputes and prove a source of unhappiness to all parties, the Court properly decreed separate maintenance to the son-in-law GOVIND RANI DASI *v* RADHA BALLABH DAS (1910)
15 C. W N. 205

HINDU LAW—MARRIAGE.

——————— *Validity of marriage —Evidence and recognition of marriage—Marriage of insane person whether valid—Presumption as to performance of alleged marriage—Degrees of Insanity—Rites and ceremonies of marriage* The respondent's claim (as opposed to that of the appellants who were distant agnates) to letters of administration depended upon whether the deceased was her father, and whether he was legally married to her mother. The Courts in India had differed · *Held* (affirming the decision of the High Court), that from the time of the alleged marriage the deceased and the respondent's mother had been recognised by all persons concerned as man and wife, and so described in important documents, and on important occasions. Their daughters were respectively married as would be natural in the case of legitimate children, and that all these facts following upon a ceremony of marriage which undoubtedly took place (though its validity was attacked), afforded an extremely strong presumption in favour of the validity of the marriage, and the legitimacy of its offspring *Held*, also, that the objection to a marriage on the ground of the mental incapacity of one of the parties must depend (as held by the High Court) on a question of degree; and that in this case the evidence of mental infirmity was wholly insufficient to establish such a degree of that defect as to rebut the very strong presumption in favour of the validity of the marriage. The established presumption in favour of the marriage applied to the forms and ceremonies necessary to constitute it a valid marriage; and such forms and ceremonies had been rightly held by the High Court to have been presumably properly performed. MOUJI LAL *v.* CHANDRABATI KUMARI (1911) . . **I. L. R. 38 Calc. 700**
L. R. 38 I. A. 122

HINDU LAW—PARTITION.

1. ——————— Alienee's share—*Alienee from co-parcener may sue for partition of that co-parcener's share only.* When certain items of family properties are conveyed by one of two co-parceners of an Hindu family to a stranger for purposes not binding on the family, the alienee from the other co-parcener of his share in the said properties may, without instituting a general suit for partition of the entire family property, maintain an action for the partition of his share in the said items IBURAMSA ROWTHAN *v* THIRUMALAI MUTHUVEERA THERUVENKATASAMI NAICK (1910)
I. L. R. 34 Mad. 269

HINDU LAW—PARTITION—*contd.*

2. ——————— Mother's share—*Mitakshara—Partition—Mother's hare son partition between sons —Mother's right to share where merely legal severance of interest between sons without partition by metes and bounds.* Under the Mitakshara law upon a partition being made by sons, after the death of their father the mother is entitled to a share equal to that of a son; but she would obtain such a share only if an actual partition took place between the sons A mere severance of interest where no actual division of the property takes place does not confer on the mother a right to a share *Ganesh Dutt* v *Jewach, I. L R 31 Calc. 262*, distinguished BETI KUNWAR *v.* JANKI KUNWAR
I. L. R 33 All. 118

3. ——————— Illegitimate son, share of—*Partition with legitimate sons after death of father—Illegitimate son takes one-half of the share of the legitimate son—Marriage, proof necessary to establish.* The fact that a woman was living under the control and protection of a man, who generally lived with her and acknowledged her children as his will raise a strong presumption that she is the wife of that man This presumption will however be rebutted by proof of facts which show that no marriage could have taken place Where relations and castemen who would have been present at the marriage if it had taken place are not called as witnesses, and persons who would have been invited have received no invitation the presumption will be that no marriage has taken place. When after a man's death, a partition of his property is effected between his legitimate and illegitimate sons, the illegitimate son takes one-half of what the legitimate son actually takes and not one-half of what a legitimate son in his place will get. *Kasaree* v *Samardhan, 5 N W. P H C, 94*, followed. CHELLAMMAL *v.* RANGANATHAM PILLAI (1910) . . . **I. L. R. 34 Mad. 277**

4. ——————— Partial partition—*Re-union* Out of six co-parceners in a joint Hindu family, three separated under a deed of partition, from the rest who continued joint as before. The Court found on these facts that the last three persons either continued as before to be co-parceners or they must be held as having immediately re-united with each other after executing the deed of partition. In appeal it was contended that there was no finding by the Court as to an agreement to re-unite or any evidence recorded of such agreement: *Held*, overruling the contention, that the evidence was that the co-parceners agreed to effect not a complete but partial disruption of the co-parcenery,

HINDU LAW—PARTITION—*concld.*

that, in other words, three of them separated from the rest and also *inter se* and that the latter agreed to continue joint. ANANDIBAI *v* HARI SUBA PAI (1911) . . . **I. L. R. 35 Bom. 293**

HINDU LAW—REVERSIONERS.

——— Legal representative—*Hindu widow—Reversionary heirs—Civil Procedure Code, 1908, s 2 (11)—Agra Tenancy Act (Local II of 1901), s. 202.* One *S K* filed a suit for possession of certain lands and for cancellation of a perpetual lease executed by her mother, but died during the pendency of the suit *Held,* that the reversionary heir of the last male owner of the property in suit was the proper legal representative of the plaintiff *Held,* also, that where the defendant simply allege that he was in possession of the land in suit as a tenant but did not allege that he was a tenant of the plaintiff, the Civil Court need not require the defendant to institute a suit in the Revenue Court as directed by s 202 of the Agra Tenancy Act, 1910 RIKHAI RAI *v* SHEO PUJAN SINGH (1910) **I. L. R. 33 All. 15**

HINDU LAW—STRIDHAN.

——— Maiden, succession to—*Sapinda, meaning of, in Mitakshara school—"Nearest relations," to a maiden, who are* Sister and sister's son are heirs to the *stridhan* of a maiden belonging to the Mitakshara School in preference to a father's brother's son In the absence of the heirs to *stridhan* specified in the texts the "nearest kinsmen" who take are those nearest in blood whether cognate or agnate. Sapindas or the nearest relations of the parents mean the sapindas of the father who are also those of the mother by reason of her identity with the husband *Per* N CHATTERJEA, *J.*—The succession to the *stridhan* of a childless woman after the husband or father, according as the marriage was in an approved or disapproved form, follows the order in which succession takes place to the husband or the father as the case may be, *i e*, it descends in the same manner as if it had belonged to the father or husband. The succession to a maiden stands on the same footing as that to a childless widow married in a disapproved form. DWARKA NATH RAY *v.* SARAT CHANDRA SINGH RAY (1911)
15 C. W. N. 1036
I. L. R. 39 Calc 319

HINDU LAW—SUCCESSION.

1. ——— Ayautuka stridhan—*Succession.* Under the Dayabhaga, the husband's younger brother is entitled to succeed to the *ayautuku stridhan* property of a childless woman in preference to a step-brother. DEBI PRASANNA ROY *v.* HARENDRA NATH GHOSE (1910)
15 C. W. N. 383

2. ——— Mother's unchastity—*Mitakshara—Unchastity of mother no bar to her inheriting son's estate. Held,* that unchastity does not preclude a Hindu mother from succeeding to her son's property. *Ganga Jati* v *Ghasita, I. L. R 1 All. 46; Dal Singh* v *Dini, I L R 32 All 155,* and *Vedammal* v *Vedanayaga Mudaliar, I. L R. 31 Mad 100,* followed BALDEO SINGH *v* MATHURA KUNWAR (1911) . . **I. L. R. 33 All. 702**

3. ——— Nambudris in Malabar—*Self-acquired property of Nambudri Brahman does not pass to the undivided family, but to his heirs under Hindu Law* Nambudri Brahmans are governed by Hindu Law, except in so far as it is shown to have been modified by usage or custom having the force of law, the probable origin of the special usage being either some doctrine of Hindu Law as it stood at the date of their settlement in Malabar, though now obsolete or some Marumakkatayam usage. The Hindu Law applicable is that laid down in the Mitakshara The self-acquisition of a Nambudri Brahman passes to his heirs under the Mitakshara Law, and not to the undivided family to which he belongs No Marumakkatayam usage has influenced the family law of Nambudris in this respect, and no doctrine of ancient Hindu Law denied the right of the son to succeed to the separate property of father VISHNU NAMBUDRI *v.* AKKAMMA (1910)
I. L. R. 34 Mad. 496

4. ——— Prostitute's estate—*Stridhan—Severance as effect of degradation—Succession to property of degraded woman* The absolute property of a Hindu prostitute is to be treated as her *stridhan* for the purposes of succession. So far as succession is concerned, the degradation suffered by prostitution severs a woman from her natural relations at the moment she becomes degraded, but not from her sons or chaste daughters born after degradation *In the goods of Kamineymoney Bewah, I L. R. 21 Calc 697, Sarnamoyee Bewa* v *Secretary of State for India, I. L R. 25 Calc. 254, Bhutnath Mondol* v *Secretary of State for India, 10 C. W N. 1085, Narasanna* v. *Gangu, I L R. 13 Mad 133,* followed *Taramunnee Dassee v Motee Buneeanee, (1846) S D A 297, Sivsangu* v *Minal, I. L R 12 Mad 277,* approved but distinguished *Sundari Dassi* v *Nemye Charan Daw, 6 C L J. 372, Subbaraya Pillai* v *Ramasami Pillai I. L. R 23 Mad 171, Narain Das* v *Trilok Tiwari, I L. R. 29 All 4,* not followed. TRIPURA CHARAN BANNERJEE *v* HARIMATI DASSI (1911) **I. L. R. 38 Calc. 493**

HINDU LAW—WIDOW.

1. ——— Family debt incurred by Hindu widow—*Sale of absolute estate in satisfaction of—Legality of sale—Registration Act XVI of 1864—Interest, reasonableness of* A simple money decree was passed when the Registration Act XVI of 1864 was in force for a debt incurred by Hindu widow on account of legal necessity:—*Held,* the absolute estate in the properties was liable to be sold in satisfaction of the decree. If the foundation of the decree be a debt of the character, for which the widow could have bound the entire interest, it is sufficiently clear, as the result of Privy Council decisions, that even if the decree is based on the widow's contract, and does

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not give a charge on the husband's estate, and the reversioners had not been made parties to the suit or execution proceedings the decree-holder would be entitled to have the entire estate sold, and if in fact the entire estate was sold and bought by the purchaser, the reversioners could not defeat the purchaser's title to the property It must depend on the circumstances in which a loan is incurred whether a provision for compound interest agreed to be paid by a Hindu widow is reasonable or not VEERABADRA AIYAR *v.* MARUDAGA NACHIAR (1910) **I. L. R. 34 Mad. 188**

2. ——— **Payment by wife of husband's debts during his life-time**—*Hindu widow—Voluntary payment—Absence of proof of obligation to repay—Burden of proof* In this case which was an appeal from the decision of the High Court in the case of *Himmat Bahadur* v *Bhawani Kunwar, I L R. 30 All 352*, the Judicial Committee merely affirmed that decision on the ground that the appellant on whom the onus lay had not proved that there was any obligation on the part of the husband or his estate to pay the moneys which were paid by his wife, and dismissed the appeal. BHAWANI KUNWAR *v.* HIMMAT BAHADUR (1911) . . . . **I. L. R. 33 All. 342**

3. ——— **Power to partition**—*Hindu widow—Nature of estate held by two widows succeeding jointly.* Whatever limitations there may be upon the power of alienation of one of two Hindu widows succeeding as such to a life interest in their husband's estate, so long as the property remains undivided, there is nothing to prevent them effecting a partition of such estate *Mussammat Sundar* v. *Mussammat Parbati, L. R. 16 I. A 186 I L. R. 12 All 51*, and *Kanni Ammal v Ammakannu Ammal, I L R 23 Mad 504*, followed *Ram Piyari* v *Mulchand, I L R. 7 All 114*, distinguished *Bhugwandeen Doobey* v. *Myna Baee, 11 Moo I A 487*, and *Gajapathi Nilamani* v *Gajapathi Radhamani, I. L R. 1 Mad 291*, referred to. DURGA DAT *v* GITA (1911) **I. L. R. 33 All. 443**

4. ——— **Mesne profits**—*Mesne profits, decree for, against Hindu widow—Execution if may be had against estate—Subrogation—Acts necessary or beneficial to estate—Wrongful acts* The mere fact that a decree for mesne profits has been obtained against a Hindu widow not entitle the decree-holder to execute such decree against the estate of her husband. It is not open to a Hindu widow to commit an act of trespass and by that fact alone to impose a liability upon the estate of her husband. That estate cannot be bound by acts of the widow which are neither necessary nor beneficial to the estate. *Harmanoje* v *Ram Prasad, 6 C L J. 462*, relied on *Pramada Nath* v. *Purna Chandra, I. L R 35 Calc. 691 s c. 12 C. W. N. 550*, doubted. *Guribala* v. *Srinath, 12 C. W N. 769; Kallu* v. *Fyazali, I. L R 30 All 394*, referred to. SADASI KOER *v* RAMGOBIND SINGH (1911) **15 C. W. N. 857**

5. ——— *Mesne profits, decree against Hindu widow for—Husband's estate*

HINDU LAW—WIDOW—*concld.*

when bound Where a Hindu widow in good faith and for the benefit of her husband's estate took possession of property from which she was subsequently ejected, the estate of the husband is liable for mesne profits due by the widow LALJI SAHAY *v* GOBERDHONE JHA (1909) . **15 C. W. N. 859**

HINDU LAW—WILL.

1. ——— **Construction**—*Bequest in favour of two married daughters—Joint tenancy or tenancy in common* A Hindu died leaving a will whereby he bequeathed the whole of his property to his two married daughters without specification of shares. *Held*, that the estate taken by the legatees was a tenancy in common and not a joint tenancy. *Jogeswar Narain Deo* v *Ramchundra Dutt, L R 23 I A 37, 44*, followed GOPI *v* MUSAMMAT JALDHARA (1910) . . . **I. L. R. 33 All. 41**

2. ——— *Construction of Will—Bequest to a Class—Persons not born at death of testator—Intention of testator.* The will of a Hindu testator without issue, after giving his wife and his mother possession of his property moveable and immoveable for their lives, contained the following clause: "On the death of my mother and my wife, the sons of my sisters, that is to say, their sons who are now in existence as also those who may be born hereafter shall in equal shares hold the said properties in possession and enjoyment by right of inheritance, and shall maintain intact and continue the service of the established duties and ancestral rites according to the practice heretofore obtaining." The testator died the day following the execution of the will *Held* (affirming the decision of the High Court), that the intention was not to declare that the sisters' sons had a "right of inheritance," but to give them under the will a vested interest in their respective shares at the testator's death, though postponing their possession and enjoyment until the deaths of the mother and widow. Assuming that the testator's intention was that all his nephews, whether then in existence or after born should take, there was a valid bequest to such of them as were capable of taking at his death, notwithstanding that others of the class were incapacitated from taking because not then born. *Ram Lal Sett* v. *Kanai Lal Sett, I L R 12 Calc. 663*, upheld and approved, as laying down the general rule of construction applicable to Hindu wills in the case of such a bequest where there is no other objection to it *Dias* v. *De Livera, L. R. 5 A C 123*, referred to, as stating a convenient rule to apply to wills of Hindus, that a gift to children not in existence at the date of the gift should be limited to those born between the date of the will and the death of the testator. BHAGABATI BARMANYA *v.* KALICHARAN SINGH (1911) **I. L. R. 38 Calc. 468**

3. ——— *Construction of will—Judgment of Privy Council—"In equal shares for life and with benefit of survivorship between themselves"—Judgment to be limited to the events then happened—Gift to a class valid, although some of*

HINDU LAW—WILL—*contd.*

class born after testator's death and hence incapable of taking—Hindu Wills Act (XXI of 1870), ss 2, 3—Indian Succession Act (X of 1865), ss 85, 98, 100, 101, 102—Incorporation of statutes—Liberty to apply—Practice. The will of a Hindu directed his executors in certain events (which happened) " to make over and divide the whole of my estate both real and personal unto and between my daughters in equal shares to whom and their respective sons I give devise and bequeath the same but should either of my said daughters die without leaving any male issue surviving but leaving my other daughter her surviving then in such case the surviving daughter and her sons shall be entitled to the share of the deceased daughter or in the case of the death of either daughter leaving sons the share of such daughter is to be paid to such her son or son's share and share alike " The testator died leaving him surviving his widow, two daughters *R* and *P* and three sons of *P*, *viz.*, *R P*, *K P*, and *J P*. At the time of the happening of the events on which the gift in favour of the daughters and their sons came into operation, there were living *R* and *P* and four sons of *P*, *viz*, *R P*, *K P*, *P L* and *B L*, the latter two of whom were born subsequent to the testator's death In a suit brought by *R* for the construction of the will and a declaration of the rights of the parties, the Privy Council held that " in the events that had happened, the daughters *R* and *P* were entitled to the testator's estate in equal shares for life and with benefit of survivorship between themselves." The liberty to apply reserved by the High Court to the parties, amongst whom were the sons of *P* was affirmed. Subsequent to the order in Council, *P* died leaving her sons *R P*, *K P*, *P L* and *B L* her surviving *R P* and *K P* thereupon claimed to be entitled to their mother's share. An application, in this behalf, was made by *R P* to the High Court :— *Held*, that the application was properly made under the liberty reserved The Privy Council in making their order intended only to describe the utmost interest that the daughters could take as between themselves in the events which up to that time had happened, and had no intention to decide the rights of sons in reference to a subsequent contingent event, which had now happened in the death of *P* leaving sons. The canon of construction to be applied to a statute incorporating the provisions of another statute, as defined in *In re Wood's Estate, 31 ch D 607*, approved of. S. 3 of the Hindu Wills Act, which controls both the quantity and quality of the interest created including the capacity of the donee to take, modifies the operation of the incorporated s 98 of the Succession Act, by the introduction of the rule of Hindu Law, that a bequest to a person not in existence at the time of the testator's death, is void. *Alangamonjori Dabee*, v. *Sonamoni Dabee, I. L. R. 8 Calc. 637*, and *Cally Nath Naugh Chowdhry* v. *Chunder Nath Naugh Chowdry, I L. R 8 Calc. 378*, followed. Hence *P L* and *B L* took no share and *P*'s share devolved on *R P*, *K P* and the representatives of *J P*. The gift to *P*'s sons as a class did not become void by reason of the incapacity of some of them, *viz*, the after-born sons, from taking under the will, as the class intended to be benefited could be ascertained within the period permitted by law *Leake* v. *Robinson, 2 Mer. 363*, distinguished *Kingsbury* v *Walter, [1901] A. C. 187*, *Dowset* v *Sweet, 1 Amb. 175*, *Young* v *Davies, 2 Drew & Sm 167*, *Shaw* v *M'Mahon, 4 Dr. & War. 431*, *Fell* v *Biddulph, L R 10 C P 701*, referred to RADHA PRASAD MALLICK *v* RANIMONI DASI (1910) . . **I. L. R. 38 Calc. 188**

HINDU LAW—WILL—*contd.*

4. ——— *Will—Use of expression " malik "—Widow's estate—Construction.* A Hindu died, leaving a Will by which (*inter alia*) he appointed his wife as residuary legatee in the following words :—" As regards whatever may remain over I appoint my wife Dhancore as the owner (*malik*) of the whole thereof." The management of the property comprising the said residue was provided for by the appointment of two persons named in the Will and certain other restrictions were placed on the management of the property by the wife. Finally provision was made for the further distribution of the property after the wife's death. *Held*, that the widow took a widow's estate and not an absolute estate. The use of the expression 'malik' by itself would be sufficient to give the widow an absolute estate, but the knowledge of the testator as to the incidents of a widow's estate and the ordinary notions or customs of Hindus is to be considered in construing a Will MOTILAL MITHALAL *v* THE ADVOCATE-GENERAL OF BOMBAY (1910) . . . . **I. L. R. 35 Bom. 279**

5. ——— **Trust to accumulate income for marriage expenses of son**—*Bequest to wife to be married—Wife married, born before testator's death—Bequest if valid—Mortgage suit against legal representative of mortgagor who sets up paramount title—Maintainability.* Where the testator by her Will directed the executor to hold certain properties in trust to accumulate the income for the marriage expenses of an unmarried son, and to give the property to the wife of the son if he married within ten years, and failing these bequests, to sell the properties and apply the proceeds for certain specified religious purposes : *Held*, that the direction to accumulate contained in the will was valid. That the testator's son having married, within the period specified, a lady who had been born before the testator died, the bequest took effect according to Hindu Law. *Tagore* v. *Tagore, L. R. I. A. Sup. Vol 47*, *Bai Mativahoo* v. *Bai Mamoo Bai, L. R 24 I A 93 : s c 1 C. W. N. 366*, relied on. NAFAR CHANDRA KUNDOO *v.* RATAN MALA DEBI (1910) . . . **15 C. W. N. 66**

6. ——— **Stridhan property**—*Dayabhaga—Ayautuka—Succession—Husband's younger brother or step-brother, preferential heir—Probate—Practice—Caveat by both—Real successor dismissed from proceeding—Probate in common form upon withdrawal of objection by the other—Revocation on appeal—Proof in common form in presence of right heir directed.* On a will being propounded of a childless Hindu woman governed by the Dayabhaga, caveat was entered by her stepbrothers.

HINDU LAW—WILL—*concld.*

as well as by her husband's younger brothers. The Judge held the former to be the preferential heirs upon intestacy and dismissed the objections of the latter on the ground that they had no *locus standi*. The step-brothers subsequently not contesting the proceedings, probate was granted in common form *Held*, on appeal, that the probate must be revoked and the propounder called upon to prove in solemn form in the presence of the husband's younger brothers. DEBI PRASANNA ROY CHOWDHRY *v.* HARENDRA NATH GHOSH (1910) . . **15 C. W. N. 383**

7. ——— **Bequest to future wife of unmarried son**—*Hindu Wills Act (XXI of 1870), s 3—Indian Succession Act (X of 1865), s. 99—Wife married born in testator's life-time—Personæ incertæ—"Kindred"—Validity of bequest according to Hindu Law* Where a Hindu testator by his will bequeathed portions of his property to the wives of his unmarried sons, and the sons subsequently to the testator's death married persons who had been born when the testator was still alive: *Held*, that such a gift would be valid according to Hindu Law *Semble:* That the power of testamentary disposition of Hindus was neither enlarged nor restricted by the Hindu Wills Act *Nafar Chandra v. Ratnamala Debi, 15 C. W N. 66: s c. 13 C. L. J 85*, referred to. *Held*, further, that assuming that s 99 of the Indian Succession Act applies to Hindu wills so as to restrict the power of disposition of Hindu testators the bequest was valid as the objects of the gift were persons "standing in a particular degree of kindred" to specified individuals within the meaning of the exception to that section The word "kindred" in the exception to s 99, in so far as it has been applied to Hindu wills, should not be interpreted in the strict sense of the English law as defined in s 20 of the Succession Act which has not been incorporated into the Hindu Wills Act, and should not be limited to blood relations when the word is imported in a Hindu will DINES CHANDRA ROY CHOWDHRY *v.* BIRAJ KAMINI DASI (1911) . **15 C. W. N. 945**

HINDU WIDOW.

See GUARDIAN . **I. L. R. 38 Calc. 862**

See HINDU LAW—DEBT. **I. L. R. 33 All. 255**

See HINDU LAW—REVERSIONER **I. L. R. 33 All. 15**

See HINDU LAW—WIDOW.

HINDU WIDOWS' REMARRIAGE ACT (XV OF 1856).

——— **s. 3.**

See GUARDIAN . **I. L. R. 38 Calc. 862**

HINDU WILLS ACT (XXI OF 1870).

——— **ss. 2, 3.**

See HINDU LAW . **I. L. R. 38 Calc. 188**

HOLDING OVER.

See LANDLORD AND TENANT **I. L. R. 35 Bom. 333**

HUNDI.

See NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881), s. 98. **I. L. R. 33 All. 4**

HUSBAND AND WIFE.

——— *Suit by husband for divorce on the ground of wife's fault—Allegation of her theft of jewellery belonging to husband—Wife's abandonment of defence and submission to decree for divorce—Decree not by mutual consent—Subsequent suit for partition of property—Civil Procedure Code (Act XIV of 1882), ss 42, 43—Objection taken for first time on appeal.* For the purpose of dealing with and distributing, in accordance with the Burmese Buddhist law, property belonging to a husband and wife, who have been divorced, it was necessary, in a suit brought by the husband for partition, to determine whether the divorce was by mutual consent or was granted on the fault of the wife It appeared from the husband's claim to a divorce that he set forth the wife's offence that she had by sundry fraudulent devices stolen certain jewels which were his property, and he asked for a decree on that ground alone. The wife in her defence denied the allegations as to her misconduct, and asked for the dismissal of the suit with costs. Witnesses were summoned, but on the day fixed for hearing she abandoned her defence, and, although continuing to deny her guilt, consented to a divorce, and judgment was therefore given for a "decree as prayed." *Held* (upholding the decision of the District Judge), that the divorce was not made by mutual consent The proceedings disclosed not an agreement between husband and wife, but a claim by the husband to which the wife submitted It was objected for the first time on appeal to the Chief Court that the husband had no right to partition of the property unless he asked for it in the suit for divorce The Chief Court held that the matter being one of procedure must be determined by ss. 42 and 43 of the Civil Procedure Code of 1882, and decided that having failed to include in his suit for divorce a claim for partition he must be taken to have relinquished it, and his subsequent suit for that relief was barred. *Held*, that it was too late to raise the point for the first time in the Court of appeal. *Held*, also (reversing the decision of the Chief Court), that ss. 42 and 43 were not applicable to a case like the present. The cause of action for divorce was the misconduct of the wife, and the cause of action for the partition was the divorce of the wife founded on that misconduct. The evidence needed in each case was also different, and the ground of divorce must be first and separately proved as a distinct cause of action before any question of partition could properly arise. If the Court found that the plaintiff had unnecessarily served his claim for a partition from that for a divorce, it could punish him by the exercise of its discretion as to costs; but such a severance did not come within the mischief aimed

HUSBAND AND WIFE—*concld.*

at by ss 42 and 43 of the Code so as to bar the claim to a partition which may be founded on the decree for divorce itself MAUNG PE *v* MA LON MAGALE (1911) . . I. L. R. 38 Calc. 629

I

IDOL.

See HINDU LAW—ENDOWMENT
I. L. R 33 All. 253

——— Suit against an idol—*Description of defendant—Amendment of plaint—Limitation—Practice.* Inasmuch as an idol is a juristic person capable of holding property, a suit respecting property in which an idol is interested is properly brought or defended in the name of the idol, although *ex necessitate rei* the proceedings in the suit must be carried on by some person who represents the idol, usually the manager of the temple in which the idol is installed *Thakur Raghunathji Maharaj* v *Shah Lal Chand, I L. R. 19 All. 330,* overruled JODHI RAI *v.* BASDEO PRASAD (1911) . . I L. R. 33 All. 735

ILLEGITIMATE SON.

See HINDU LAW—PARTITION.
I L R. 34 Mad. 277

IMITATION.

See TRADE-MARK.
I. L. R. 35 Bom. 425

IMMOVEABLE PROPERTY.

——— sale of—

See SPECIFIC PERFORMANCE.
I L. R. 35 Bom. 110

——— *Sale of, in Court-auction—Fraud, sale vitiated by—Vendee benamidar of purchaser—Suit to cancel sale—Who can sue—Contract Act, ss. 231 and 232.* Where a sale of property is vitiated by fraud on the part of the vendor, the person who brought the property at Court-auction though only a benamidar can maintain an action to cancel the sale *Pether Perumal Chetty* v. *Muniandy Seravai, I L R. 35 Calc. 551,* distinguished A benami transaction does not vest any title to immoveable property, the subject of such transaction, in the benamidar, and therefore such a person cannot maintain a suit which is based on title, namely, a suit in ejectment. But where an agent of an undisclosed principal enters into a contract for the purchase of land and the land is conveyed to him in pursuance of the contract he acquires rights and habilities under the contract (see ss 231 and 232, Contract Act, IX of 1872) and can sue in respect thereof. DATLA VENKATA SURYANARAYANA JAGAPATHIRAJU *v.* GOLUGURI BAPIRAJU (1910)
I. L. R. 34 Mad. 143

IMPARTIBLE ESTATE.

See SUCCESSION CERTIFICATE.
I. L. R. 38 Calc. 182

IMPROVEMENT.

See PARTITION . 15 C. W. N. 375

INAM.

See CIVIL PROCEDURE CODE, 1882, s. 424.
I L. R. 35 Bom. 362

INCITEMENT TO MURDER AND ACTS OF VIOLENCE.

See PRINTING PRESS, FORFEITURE OF
I. L. R. 38 Calc. 202

INCOME.

——— attachment of—

See GUJERATH TALUKDARS' ACT (BOM. ACT VI OF 1888), s 31.
I. L. R. 35 Bom. 97

INCOME TAX.

See ROYALTY . I. L R. 38 Calc 372

——— illegal levy of—

See MUNICIPAL ELECTION.
I. L R. 38 Calc. 501

INCORPOREAL RIGHTS.

——— *Incorporeal rights, enjoyment of, for less than the statutory period—Person in such enjoyment entitled to protection against trespassers.* It is well settled law that a trespasser, in enjoyment of land for less than the statutory period, is entitled to be maintained in possession against all persons except the true owner. The same principle is applicable to incorporeal rights, such as rights to light and water-courses. A person in enjoyment of a water-course for less than 20 years is entitled to protection in such enjoyment against persons who have no right to such water-course KONDAPA RAJAM NAIDU *v* DEVARAKONDA SURYANARAYAN (1910)
I. L R. 34 Mad. 173

INCUMBRANCE.

See MORTGAGE . I. L. R. 38 Calc. 923

INDIGO.

——— cultivation of—

See LANDLORD AND TENANT
I L. R. 38 Calc. 432

INFERENCE OF LAW.

See SECOND APPEAL
I. L. R. 38 Calc. 278

INFRINGEMENT.

See TRADE-MARK . I. L. R. 38 Calc. 110

INHERENT POWER OF THE COURT.

See CIVIL PROCEDURE CODE, 1908, s. 144
I L. R. 35 Bom. 255

See CIVIL PROCEDURE CODE, 1908, O. I., R. 10 . . I. L. R. 35 Bom. 393

INHERITANCE.

See HINDU LAW . I. L. R. 38 Calc. 603

INJUNCTION.

See CIVIL PROCEDURE CODE, 1908, O. XXXIX, R 1 . I. L. R 33 All. 79

See MADRAS IRRIGATION CESS ACT. I. L. R. 34 Mad. 366

See TRADE-MARK I. L. R. 35 Bom. 425

1 ——— Cases where injunction might be granted—*Plaintiff out of possession —Prima facie claim to the disputed property—Irreparable injury* Where the plaintiff is out of possession and claims possession, the Court will refuse to interfere by grant of injunction against the defendant in possession under a claim of right, but where the threatened injury will be irreparable, an injunction will lie at the instance of a complainant out of possession No injunction should be granted in a case where there is no foundation for any suggestion that the defendants are about to commit an act in the nature of waste Where the plaintiff has another adequate remedy, and where if an injunction were granted it would be of the vaguest description, no injunction ought to be granted in such cases. KESHO PRASAD SINGH *v.* SRINIBASH PRASAD SINGH (1911) I. L. R. 38 Calc. 791

2. ——— Jurisdiction—*Restraint of proceedings in subordinate Court, outside the jurisdiction of High Court—Injunction in personam.* The High Court can restrain proceedings in a Court outside its jurisdiction only if the party sought to be restrained is within its jurisdiction, and it is not sufficient that the party should have property within the jurisdiction *Vulcan Iron Works* v. *Bishumbhur Prosad, I L R. 36 Calc. 233*, followed *The Carron Iron Co* v. *Maclaren, 5 H L. C 416*, referred to *Mungle Chand* v. *Gopal Ram, I. L R 34 Calc. 101*, not followed. JUMNA DASS *v* HARCHARAN DASS (1910) I. L R. 38 Calc. 405

3. ——— Suit against Secretary of State for India—*Injunction, suit for—Civil Procedure Code (Act XIV of 1882), s 424—Notice—Inam—Resumption.* The plaintiff, an inamdar of a village, was called upon by the Collector to hand over the management of the village to Government officials on the ground that in the events that had happened the *inam* had become resumable by Government. The plaintiff, thereupon, without giving the notice required by s. 424 of the Civil Procedure Code (Act XIV of 1882). filed a suit against the Secretary of State for India in Council for a declaration that he was entitled to hold the village inam, and for a permanent injunction restraining the defendant from resuming the village. *Held*, that the suit was bad in absence of notice required by s. 424 of the Civil Procedure Code (Act XIV of 1882). The term "act" used in s. 424 of the Civil Procedure Code of 1882 relates only to the public officers, not to the Secretary of State The expression "no suit shall be instituted against the Secretary of State in Council" is wide enough to include suits for every kind, whether for injunction or otherwise. *Per* HEATON, *J.*—

INJUNCTION—*concld.*

Where there is a serious injury so imminent that it can only be prevented by an immediate injunction, a Court will not be debarred from entertaining the suit and issuing the injunction though the section requires previous notice, if it is owing to the immediate need of the injunction that the plaintiff has come to the Court for relief before giving the required notice *Flower* v *Local Board of Low Leyton, 5 Ch. D 347*, followed SECRETARY OF STATE *v* GAJANAN KRISHNARAO (1911) I. L. R. 35 Bom. 362

INJUNCTION IN PERSONAM.

See INJUNCTION I. L. R 38 Calc. 405

INJURY (IRREPARABLE).

See INJUNCTION . I. L. R. 38 Calc. 791

INJURY TO HEALTH.

See NUISANCE . I L. R. 38 Calc 296

INJURY TO HOUSE.

See PROHIBITORY ORDER. I. L. R. 38 Calc. 876

INSANITY.

See HINDU LAW—MARRIAGE. I. L. R. 38 Calc. 700

INSOLVENCY.

See INSOLVENCY ACT.

See LIMITATION ACT, 1908, s 19 I. L. R. 35 Bom. 383

See PROVINCIAL INSOLVENCY ACT.

1. ——— Insolvency in foreign jurisdiction—*Effect of in other jurisdictions—Discharge of debts—Burden of proof.* Insolvency does not of itself operate as a discharge of debts in all jurisdictions. In the absence of authority that insolvency does so operate in a particular jurisdiction the Court is not entitled to assume in favour of a defendant that the debt is discharged by his insolvency in that jurisdiction RANGASWAMI PADAYACHI *v* NARAYANASWAMI PADAYACHI (1910) . . I. L. R 34 Mad. 247

2. ——— *Insolvency—Adjudication in England—Trustee in Bankruptcy—Petition to the Indian Court to act in aid of, and to be auxiliary to, the English Court—Examination of Witness—Jurisdiction—Bankruptcy Act, 1883 (46 & 47 Vict., c 52) ss. 27, 118— Presidency-Towns Insolvency Act (III of 1909), s 126.* The firm of L King & Co. carrying on business in London as well as in Calcutta was adjudicated bankrupt in England, and a Trustee in Bankruptcy of the property of the firm was appointed by the English Court On an application of the Trustee in Bankruptcy to that Court, it was ordered that the High Court of Judicature in Bengal be requested to act in aid of and be auxiliary to it. The Trustee in Bankruptcy, thereupon, petitioned the High Court in Bengal presenting the order of the English Court and seeking the assistance of the High Court in and about the said insolvency. He obtained an

INSOLVENCY—*contd.*

order that the High Court of Judicature in Bengal and its officers do act in aid and be auxiliary to the High Court of Justice in England and, further, that James, the Manager in Calcutta of the firm of L King & Co , do personally attend before this Court to be examined before it Upon James appearing on the date fixed for his examination and objecting that he ought not to be examined, because the order ought not to have been made :— *Held*, that to get the jurisdiction to examine James as a witness, there must be a request from the English Court asking this Court to act in aid, and a letter of request from the one Court to the other ought to have been sent, and that the order of the English Court presented by the Trustee in Bankruptcy was not sufficient to give this Court jurisdiction. *In re* L. KING & Co , BANKRUPTS (1911) **I. L. R. 38 Calc. 542**

3. ———— Banker and customer—*Money held by banker in suspense account—Fiduciary relationship* Certain monies were held by A & Co , bankers, in suspense on the claimant's account Pending negotiations as to its investment the bankers failed —*Held, per* MILLER & MUNRO, *JJ.* (ABDUR RAHIM, *J* , dissenting), that the money was not held in a fiduciary capacity and the relationship of banker and customer existed between the parties *Per* MILLER, *J* — When a man pays money into a bank, whether he is a customer or not the presumption in the absence of other evidence will be that he pays the money in to be held by the banker as bankers ordinarily hold the moneys of their customers *Official Assignee* v *Smith, I. L R 32 Mad 68*, followed. *Per* ABDUR RAHIM, *J.*—Money held by a banker to a suspense account does not amount to payment to the banker *Commercial Bank of Australia* v *Official Assignee of the Estate of Wilson & Co., [1893] A C 181*, followed. OFFICIAL ASSIGNEE OF MADRAS *v* MILAPPARANGAVUR SARVAJANA SAHAYA NIDHI (1910) **I. L. R. 34 Mad. 125**

4. ———— Insolvency in Presidency Towns—*Appeal under the Letters Patent, s 15 —Indian Insolvency Act, 11 & 12 Vict., Ch. 21 —High Court Act, 24 & 25 Vict., Ch 104—Banker and customer, relationship of—Fiduciary capacity, money held in* A further appeal lies under s 15 of the Letters Patent from the judgment of two Judges of the High Court who differ in opinion in an appeal from the Commissioner in Insolvency Under s 11 of the High Court Act, 24 & 25 Vict., Ch. 104, the Indian Insolvency Act, s. 73, is not applicable to the High Court, it being inconsistent with s 15 of the Letters Patent A customer instructed his banker to purchase a Government Promissory note with money standing to his credit with the banker Before doing so the banker failed On a motion by the customer to have his amount paid in full :—*Held, per* MILLER, *J* —A mere direction by a customer to a banker to apply money at credit of the former's account in a particular way does not alter the relationship between banker and customer. *Per*

INSOLVENCY—*concld.*

MUNRO *J.* (dissenting from his judgment in the same case reported in *I. L R 33 Mad at p 146*). The bare undertaking of the banker to purchase a note could not have the effect of transferring the ownership of the sum of money necessary for the purchase from the banker to the customer OFFICIAL ASSIGNEE OF MADRAS *v* LUPPRIAN (1910) **I. L. R. 34 Mad. 121**

INSOLVENCY ACT.

———— ss. 7, 27, 49—*Salary earned by Insolvent after vesting order and before discharge, vests in Official Assignee, who however must get an order under s 27.* The earnings of an insolvent, including salary, after his insolvency and before his discharge vest in the Official Assignee under s 7 of the Insolvency Act The effect of s 27 of the Act is not to cut down the operation of s 7 but to require the Official Assignee before obtaining payment of any salary due to insolvent to obtain an Order of Court as to the amount necessary for the maintenance of the insolvent A judgment-creditor of the insolvent who is aware of the insolvency and whose judgment debt is included in the schedule cannot attach such salary without giving the Official Assignee an opportunity of obtaining an order under s 27 The insolvent debtor has the right to object to such attachment as it is open to him to show that property attached as his belongs to another RANGANATHA RAO *v* ANANDA CHARIAR (1910) . . . **I. L. R 34 Mad. 183**

INSOLVENCY COURT.

———— sanction of—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS 17, 103 AND 104 **I. L R. 35 Bom. 63**

INSOLVENT.

See PRESIDENCY TOWNS INSOLVENCY ACT, 1909, SS 7, 86 **I. L. R. 35 Bom. 473**

———— criminal proceedings against—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS 17, 103 AND 104. **I. L. R. 35 Bom. 63**

INSPECTION.

See DISCOVERY . **I. L. R. 38 Calc. 428**

INSPECTION OF DOCUMENT.

See SOLICITOR'S LIEN FOR COSTS **I L. R. 35 Bom. 352**

INSTALMENTS.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S 15B **I. L. R. 35 Bom. 190 ; 310**

———— *Contract—Default in payment of instalments—Waiver—Effect of the waiver* The plaintiff agreed to sell certain lands to the defendants for R1,000 in 1901 and put the latter in possession thereof the same day The material stipulations in the contract were as fol-

INSTALMENTS—*concld.*

lows :—(i) that the purchase money should be paid annually by instalments of R100 each on a certain day fixed in the contract ; (ii) that in case of default in the payment of the first instalment on the due date, the plaintiff should be entitled to recover it as rent and sue for possession of the lands ; (iii) that, in case of default in the payment of any three or four subsequent instalments on the due dates the plaintiff should be entitled to recover possession of the lands and claim the unpaid instalments as rent ; and (iv) that on payment of all the instalments the title to the lands should be treated as having passed to the respondent by sale, but that in the meanwhile the plaintiff should continue owner thereof In 1908, the plaintiff filed the present suit to recover possession of the lands, alleging default in the payment of the instalments which became due in 1904, 1905 and 1906. The lower Courts dismissed the suit on the ground that the plaintiff had waived the payment of the first two instalments, and probably the third also On appeal :—*Held*, confirming the decree, that as to the first three instalments the plaintiff dealt with the defendant in such a way as to show that he did not insist on payment on the dates fixed in the contract ; that, therefore, after that course of conduct, he was not warranted in law in enforcing payment according to the strict terms of the contract without previous intimation to the defendant to that effect. *Cornwall* v. *Henson*, [*1900*] *2 Ch. 298*, followed. CHHAGAN *v.* SUKA VALAD BARKU (1911) **I. L. R. 35 Bom. 511**

INSURANCE POLICY.

See COMMON CARRIER, LIABILITIES OF **I. L. R. 38 Calc. 28**

See CARRIERS ACT, S. 6. **15 C. W. N. 226**

INTENTION.

See PRESS ACT (XXV OF 1867), SS 4 AND 5 . **I. L. R. 35 Bom. 55**

INTENTION OF PARTIES.

See MINERAL RIGHTS **I. L. R. 38 Calc. 845**

INTEREST.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879). **I. L. R. 35 Bom. 204**

See MAHOMEDAN LAW—DOWER **I. L. R. 33 All. 182**

See MORTGATE . **I. L. R. 38 Calc 342**
15 C W N. 962
I. L. R. 35 Bom. 327

1. ———— *Civil Procedure Code (Act V of 1908), s 144—Decree—Interest, award of—Discretion of Court—Land Acquisition Act (I of 1894)—Court determining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—Interest over the excess—Inherent powers of the Court.* A sum of money by way of compensation awarded

INTEREST—*concld.*

under the Land Acquisition Act (I of 1894) and paid into Court was taken out by the claimant. Subsequently on appeal, the High Court reduced the amount of compensation payable to him, but made no order as to interest Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court *Held*, that the interest claimed should be awarded, inasmuch as the claimant had had the benefit of the money belonging to Government in excess of that to which the High Court held him to be entitled, and the benefit was represented not only by the excess wrongly taken by the claimant from the District Court but also the amount of interest which the excess carried *Mookoond Lal Pal* v. *Mahomed Sami Meah, I L. R 14 Calc. 484, 486*, and *Govind Vaman v Sakharam Ramchandra, I. L. R. 3 Bom 42*, referred to. COLLECTOR OF AHMEDABAD *v.* LAVJI MULJI (1911) . **I L. R. 35 Bom. 255**

2. ———— *Interest, right to claim, till payment or legal tender—Tender or agreement to waive tender must be of an ascertained sum —Valid tender must be unconditional.* At common law, where interest is payable by the terms of a contract it runs ordinarily up to the date of payment. A valid tender must be an unconditional offer to pay a specific and ascertained sum. An offer to pay such amount as may be found due on a settlement of accounts if the payee would execute an indemnity bond in accordance with law is not a valid tender. There cannot be a tender or an agreement to waive tender of an unascertained sum. *Garuda Reddi* v. *Gudi Janakayya Garu, 1 Mad. H. C. R. 124*, distinguished. *Pandurang Krishnaji and another* v. *Dadhabhoy Nowroji, I. L. R. 26 Bom 643*, distinguished. LAL BATCHA SAHIB *v.* ARCOT NARAINASWAMI MUDALIYAR (1910) **I. L. R. 34 Mad. 320**

INTERIM ORDERS.

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 25. **I. L. R. 35 Bom. 47**

INTERLOCUTORY ORDER.

See LAND ACQUISITION. **I. L. R. 38 Calc. 230**

See CIVIL PROCEDURE CODE, 1908, S 115. **15 C. W. N. 682 ; 848**

See CIVIL PROCEDURE CODE, 1908, O. XXXIX, R 7 . **15 C. W. N. 353**

INTESTACY.

See JEWISH LAW **I L. R. 38 Calc. 708**

INVENTORY.

———— preparation of—

See CIVIL PROCEDURE CODE, 1908, O. XXX, R. 7 . **15 C. W. N. 353**

INVESTIGATION.

See FRAUD . **I. L. R. 38 Calc. 936**

IRREGULARITY.

See AUCTION-PURCHASER.
I. L. R. 38 Calc. 622

See DECREE . I. L. R. 38 Calc. 125

IRRIGATION.

See EASEMENT . 15 C. W. N. 259

IRRIGATION WORKS.

———— *Government, liability of, for not repairing irrigation works—No duty of Government to repair irrigation works* In India, the Government is under no obligation with regard to each individual ryot to repair irrigation works whenever they require repair *Madras Railway Company* v *Zemindar of Carvetnagaram, L R 1 I. A. 364*, distinguished The rule derivable from English cases is that where statutory powers have been conferred and statutory duties imposed on persons or corporations, no liability for non-feasance in regard to individuals arises, in the absence of such liability under the common law, merely because such duty is imposed. The statute must impose the liability expressly or by clear implication *Sankara Vadivelu Pillai* v *Secretary of State for India, I L. R 28 Mad 72*, referred to. The right and obligations of Government in regard to irrigation works in this country have to be ascertained from unrecorded custom and practice; and no custom or practice, recorded or unrecorded gives the ryot, in case of non-repair, compensation measured by the value of the crops lost by defects in irrigation works commanding his land arising from such non-repair. There is no contract between a ryot and the Government, by which the latter is bound to maintain a supply of water for the irrigation of lands belonging to the former. The irrigation rights of ryotwari owners are not rights *personam*, but rather partake of the nature of rights *in rem* *Chinnappa Mudaliar* v. *Sikka Naiken, I L R 24 Mad. 36*, doubted SECRETARY OF STATE FOR INDIA *v.* MUTHUVEERAMA REDDY (1910) . . . I. L. R. 34 Mad. 82

ISSUES.

———— *Issues, raising of—Practice.* The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the judge to frame for decision by the jury in a jury trial at *nisi prius* in England WEST END WATCH COMPANY *v.* BERNA WATCH COMPANY (1910) . . . I. L. R. 35 Bom. 425

J

JEWISH LAW.

———— "Ketubah"—*Custom—Marriage settlement—Charge on husband's property—Priority—Intestacy—Rights of wife in event of a divorce.* A *ketubah* does not create any charge in favour of a widow against her deceased husband's estate. It gives a right enforceable by an innocent wife when she is divorced by her husband. MOZELLE JOSHUA *v* SOPHIE ARAKIE (1911) . . I. L. R. 38 Calc. 708

JOINT AND ACQUIRED PROPERTY.

See JURISDICTION.
I. L. R. 34 Mad. 257

JOINT CONTRACT.

See CIVIL PROCEDURE CODE, 1882, s 462.
I. L. R. 34 Mad. 314

JOINT DECREE-HOLDERS.

———— rights of, inter se—

See EXECUTION OF DECREE.
I. L. R. 33 All. 563

JOINT FAMILY.

See HINDU LAW—ALIENATION.
I. L. R. 33 All. 654

See HINDU LAW—JOINT FAMILY

JOINT MAGISTRATE.

See BENGAL REGULATION NO VI OF 1825, s. 2 . . I. L. R. 33 All. 84

JOINT OWNERS.

See PENAL CODE (ACT XLV OF 1860), s 297 . . I. L. R. 33 All. 773

See DISPUTE CONCERNING LAND.
I. L. R. 38 Calc. 889

JOINT TENANCY.

1. ———— **Presumption of joint tenancy**—*Gift—Donor guardian for donees—Management handed over on different dates, effect of—Transfer of Property Act, s. 45.* Where there are no words in an instrument of gift of property to several persons indicating an intention to create tenancies in common, there is a presumption that the donees hold the property as joint tenants and not as tenants in common. Indian Succession Act, s 93, illustration, relied on Differences in dates of handing over the management of the property by the donor to the several donees creates no presumption in favour of a tenancy in connection, the property having vested on the same date. *Navroji Manockji Wadia* v *Perozbai, I. L. R 23 Bom. 80*, referred to S 45, Transfer of Property Act, has no application to gifts. ARAKAL JOSEPH GABRIEL *v.* DOMINGO INAS (1910) . I. L. R. 34 Mad. 80

2. ———— **Partition**—*Suit by transferee of a portion of a joint tenancy for partition of such portion, maintainability of—Limitation Act XV of 1877, Sch II, Art 144—Adverse possession burden of proving, in a suit for partition.* The transferee of a portion of a joint tenancy can maintain a suit for partition of such portion when such partition will not be attended with much inconvenience to the other sharers. *Ramasamy Chetti* v. *Alagirisamy Chetti, I. L. R. 27 Mad. 361*,

JOINT TENANCY—*concld.*

not followed. Where in such a suit by the transferee, it is alleged that the right of the transferor to claim a share has become barred by exclusion for more than twelve years from enjoyment, the article of the Limitation Act applicable is art. 144 and the burden will be on the defendant to show that the sharer was, in denial of his title, excluded from enjoyment of his share. HARIKRISTNA CHOWDARY *v.* VENKATALAKSHMI NARAYANA (1910) I. L. R 34 Mad. 402

JOINT TRIAL

See CONFESSION . I. L. R. 38 Calc. 446

JUDGE.

——— personal knowledge of—

See JUDGMENT . I. L. R. 38 Calc. 153

JUDGMENT.

See CIVIL PROCEDURE CODE, 1908, O. XX, R 2 . I. L. R. 33 All. 236

——— a nullity—

See JURISDICTION. I. L. R. 38 Calc. 639

1. ——— Judgment, binding nature of, on succeeding Judge—*Partition of property between co-widows may be effected orally* Where a Judge on appeal decides certain points and remands the case, his decision is binding on his successor before whom the case comes up again on appeal from the judgment on remand. There is nothing in the Transfer of Property Act to prevent co-widows effecting an absolute division of property orally. LATCHUMAMMAL *v.* GANGAMMAL (1910) I. L. R 34 Mad. 72

2. ——— Personal knowledge of Judge—*Materials not in evidence or improperly admitted as basis of judgment—Validity of such judgment.* A judgment which is based on materials which were not in evidence and which have been improperly admitted or on the personal knowledge of the Judge, is not in accordance with law. *Vallabha* v. *Madusudanan, I. L. R 12 Mad 495,* referred to DURGA PRASAD SINGH *v* RAM DOYAL CHAUDHURI (1910) . I. L. R. 38 Calc. 153

JUDGMENT-DEBTOR.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 91. I. L. R. 35 Bom. 29

"JUDICIAL PROCEEDING."

See CRIMINAL PROCEDURE CODE, S. 476. I. L. R. 33 All. 396

See LEGAL PRACTITIONERS ACT, S. 14 15 C. W. N. 269

JUDICIAL SEPARATION.

See DIVORCE ACT (IV OF 1869), S. 23. I. L. R. 33 All. 500

JURISDICTION.

See APPEAL . I. L. R. 38 Calc. 391
I. L. R. 33 All. 634

See ARBITRATION BY COURT. I. L. R. 38 Calc. 421

See BENGAL REGULATION VI OF 1825, S 2 . . I. L. R. 33 All. 84

See CIVIL AND REVENUE COURTS I. L. R 33 All. 1

See CIVIL PROCEDURE CODE, 1882, S 43 I. L. R. 33 All. 244

See CIVIL PROCEDURE CODE, 1908, OO. XXIII, XLI, R 11 I. L. R. 35 Bom. 261

See COPYRIGHT ACT (XX OF 1847), SS 7 AND 12 . I. L. R 33 All. 24

See CRIMINAL PROCEDURE CODE, S 520 I. L. R. 35 Bom 253

See EXECUTION OF DECREE I. L. R 33 All. 306

See FRAUD . I. L R. 38 Calc. 936

See INSOLVENCY . I. L. R. 38 Calc. 542

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF HIGH COURT.

See LAND ACQUISITION ACT (I OF 1894), S. 18 . . I. L. R. 35 Bom. 146

See MORTGAGE . I. L. R. 33 All. 97

See PRESIDENCY SMALL CAUSE COURT. I. L. R. 38 Calc. 425

JURISDICTION OF CIVIL COURT.

See LAND REVENUE CODE (BOM ACT V OF 1879), S. 79A I. L. R. 35 Calc 72

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S 233 (*l*) I. L. R. 33 All. 440

1. ——— Suit for declaration of title and injunction, valuation of—*Jurisdiction—Court Fees Act (VII of 1870), s 7, sub-s (4), cls.* (c) *and* (d)—*Suits Valuation Act (VII of 1887), s. 8—Jurisdiction.* Plaintiff landlord sued for declaration of title and for an injunction to restrain from realising rents the defendants who had been recorded in settlement proceedings as entitled to realise rent from tenants The value of the property was found to be about R4,000 or R5,000, but the plaintiff valued the reliefs prayed by him at only R500. *Held,* that the value of the suit ought to be the value of the property as it was virtually a suit for possession and that therefore the suit did not lie in the Court of the Munsif. *Ganapati* v. *Chathu, I L. R 12 Mad 222, Ibrayan* v *Komamutti, I. L R 15 Mad 501,* referred to. The proposition cannot be maintained that it is open to the plaintiff in such cases to value the suit arbitrarily. *Hari Sankar Dutt* v. *Kali Kumar Patra, I. L. R. 32 Calc. 734,* commented on and

JURISDICTION OF CIVIL COURT—*contd.*

distinguished. *Boidya Nath Adya* v *Makhan Lal Adya, I. L R 17 Calc 680, Run Bahadur* v *Lucho Koer, I L R 11 Calc 301,* referred to KRISHNA DAS LALA *v.* HARI CHURN BANERJEE (1911)
15 C. W. N. 823

2. ——— **Consent of the parties as to jurisdiction**—*Suit of value beyond the jurisdiction of the Court—Trial of suit—Jurisdiction cannot be questioned in appeal—Evidence Act (I of 1872), s 58.* The plaintiffs filed a suit for partition in the Court of the Subordinate Judge, First Class, valuing their claim at an amount which made the suit triable by that Court alone The Judge, however, made over the trial of the suit to the Joint Subordinate Judge. In the latter Court, neither party raised any objection on the ground of jurisdiction, nor was any issue raised relating to it. The trial proceeded on merits: and a decree was passed in favour of plaintiffs. The defendant appealed to the lower Appellate Court, where he, for the first time, raised the question of jurisdiction on the strength of the market value stated in the plaint. The objection was overruled. On appeal:—*Held,* that the market value stated in the plaint *primâ facie* determined the jurisdiction. *Held,* further, that as neither party raised any question as to want of jurisdiction in the first Court, and as they by their conduct and silence treated the market value to be of the amount sufficient to give jurisdiction to the Court, they dispensed with proof on the question by their tacit admissions, and thus the principle of law laid down in s 58 of the Indian Evidence Act came into operation and prevented the result of the statement of the market value in the plaint. As a rule, parties cannot by consent give jurisdiction where none exists This rule applies only where the law confers no jurisdiction It does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question as to jurisdiction, where that question depends on facts to be ascertained. JOSE ANTONIO *v.* FRANCISCO ANTONIO (1910)
I. L. R. 35 Bom. 24

3. ——— **Suit for declaring adoption invalid**—*Jurisdiction—Civil Court—Subordinate Judge of Second Class—Bombay Civil Court Act (XIV of 1869), s 24—Claim valued for Court-fee purposes at R130—Court Fees Act (VII of 1870), s 7, cl (v), sub-cls (c), (d)—Property exceeding R5,000 in value—Mahomedan law—Converts from Hinduism—Custom of adoption—Burden of proof.* A suit to obtain a declaration that an adoption was invalid was valued for Court-fee purposes at R130, though the property affected by the adoption was more than R5,000 in value It was brought in the Court of the Subordinate Judge of the second class, whose jurisdiction extended only to suits involving claims valued under R5,000 (Bombay Civil Courts Act, 1869, s 24). It was objected that the Subordinate Judge had no jurisdiction to entertain the suit. *Held,* that the Subordinate

JURISDICTION OF CIVIL COURT—*contd*

Judge was competent to try the suit. *Sangappa* v *Shibasava, (1889), P. J p. 98,* and *Bai Rewa* v. *Keshavram Dulavram, (1895), P. J p. 228,* followed. The Mahomedan law does not recognise adoption. Hence, where a Hindu is converted to Mahomedanism, the presumption is that as a necessary consequence of conversion the law of adoption recognised by Hindu law has been abandoned by him. He who alleges that the usage and law in question had been retained must prove it. BAI MACHHBAI *v.* BAI HIRBAI (1911) . **I. L. R. 35 Bom. 264**

4. ——— **Judgment of Court having no jurisdiction, a nullity**—*Jurisdiction—Undervaluation of suit—Change of Court of Appeal owing to undervaluation—Jurisdiction of Appellate Court—Effect of such judgment—Consent-decree to the prejudice of minor or any reversionary heir, not binding on heir—Stranger, introduction of, into appeal, without leave of Court.* A suit was intentionally undervalued The defendants raised no objection as regards valuation, and the suit was tried. The appeal was filed before the District Judge instead of before the High Court, in consequence of the undervaluation, and the District Judge decided the appeal, by a consent-decree. *Held,* that if a Court has no jurisdiction over the subject-matter of the litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities, and not only voidable; they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the Court in which they are rendered, but be declared void by every Court in which they may be presented These principles apply not only to Original Courts, but also to Courts of Appeal. Jurisdiction cannot be conferred upon a Court of Appeal by consent of parties, and any waiver on their part cannot make up for the lack or defect of jurisdiction *Gurdeo Singh* v. *Chandrikah Singh, I L R. 36 Calc. 193, Bai Nath Singh* v *Gajraj Singh, 7 All. L. J R 675, Gooroo Pershad Roy* v. *Juggobundoo Mozoomdar (1862), W. R F. B 15, Golab Sao* v. *Chowdhury Madho Lal, 9 C. W. N. 956, Ledgard* v *Bull, I L R 9 All. 191 L R. 13 I A. 134, Minakshi Naidu* v. *Subramanya Sastri, I L. R 11 Mad 26 L. R. 14 I. A. 160, Lawrence* v. *Wilcock, 11 A & E 941, The Queen* v. *The Judge of the County Court of Shropshire, 20 Q. B. D. 242,* and *In re Aylmer, 20 Q. B. D 258,* referred to. When in a suit between a Hindu widow, and a claimant to the estate of her husband, a stranger who was not a party to the suit in the Original Court was made a party to the appeal without leave of the Court and a consent-decree made, the decree was not binding upon the reversionary heirs. A Hindu widow, who is a limited or qualified owner, cannot confess judgment and be party to a consent-decree so as to bind the inheritance in the hands of the reversionary heirs *Katama Natchier* v. *The Rajah of Shivagunga, 9 Moo I. A. 539, Stapilton* v. *Stapilton, 1 White & Tud. 8th Ed. 234 1 Atk. 2,* distinguished. *Imrit Konwar* v. *Roop Narain Singh, 6 C. L. R. 76,* explained.

JURISDICTION OF CIVIL COURT—*concld.*

Sheo Narain Singh v. *Khurgo Koeiry, 10 C. L R 337, Sant Kumar* v *Deo Saran, I. L. R. 8 All 365, Jeram Lalyee* v. *Veervar, 5 Bom. L. R. 885, Gobind Krishna Narain* v *Khunni Lal, I L. R 29 All 487, Mahadeo* v *Baldeo, I. L. R. 30 All 75 Roy Radha Kissen* v. *Nauratan Lall, 6 C. L J 490, Asharam Sadhani* v. *Chandi Churn Mukerjee, 13 C. W N. 147*, referred to. A consent-decree does not operate to the prejudice of persons not parties thereto *Nicholas* v. *Asphar, I L. R. 24 Calc. 218, In re South American and Mexican Company, [1895] 1 Ch 37*, and *The Bellcairn, 10 P. D. 161*, distinguished *Huddersfield Banking Company, Limited* v *Lister, [1895] 2 Ch 273*, followed. RAJLAKSHMI DASEE *v* KATYAYANI DASEE (1910) . I. L. R. 38 Calc. 639

JURISDICTION OF CRIMINAL COURT

See CRIMINAL PROCEDURE CODE, ss. 188, 227 . . I. L. R. 33 All. 514

See CRIMINAL PROCEDURE CODE, s 476 I. L. R. 33 All. 396

See DISPUTE CONCERNING LAND I. L. R. 38 Calc 889

See OFFERINGS TO DEITY. I. L. R. 38 Calc. 387

1. ———— **Transfer of territory**—*Jurisdiction—Offence committed in British India—Appeal from conviction—Transfer pending appeal of place where offence was committed, to a native state* An offence was committed within British India. Certain persons were convicted thereof and appealed against their conviction to the appropriate Court in British India. Pending the hearing of their appeal, however, the place when the offence had been committed was constituted part of an independent Native State *Held*, that this subsequent transfer of territory did not deprive the Court in which the appeal had been filed of its jurisdiction to hear it. EMPEROR *v* MAHABIR (1911) . . . I. L. R. 33 All. 578

2. ———— **Magistrate, power of**—*Order to police to take possession of account books the subject of an offence, without summons to produce or search warrant issued—Legality of order—Reference of case after local investigation to a Magistrate for inquiry and report—Irregularity—Quashing pending proceedings—Criminal Procedure Code (Act V of 1898), ss 94, 96, 192, 202—Valuable security—Title page of account book containing names and shares of the partners signed by them—Penal Code (Act XLV of 1860), s 30.* A Magistrate may, on taking cognizance of a complaint, issue either a summons under s 94 or a search warrant under s. 96 of the Criminal Procedure Code, but is not competent to pass an order directing the police to take possession of account books forming the subject of the charge. If the Magistrate, after first having examined the complainant under s. 200, is not satisfied that process should issue, he can, under s. 202, either hold an inquiry and take evidence himself, or direct a "local investigation" by a subordinate officer. After ordering a police investigation, he may, if dissatisfied with the materials, personally make a further inquiry and take evidence, or direct a further "local investigation," but not an inquiry and report by another Magistrate. If he thinks it proper to send the case to a Magistrate for inquiry, other than a "local investigation," he should transfer it under s. 192 to the latter for disposal, and not for a report. Where the complainant made no specific allegations of facts in the complaint, but stated in his examination on investigation under s. 202 that when the *jubda* books were first opened, the title pages contained the name of his son as a partner, and that he later discovered that a substitution of pages had been made showing the name of his father-in-law as a partner, and the statements in the complaint and such examination were not consistent as to the names originally entered, and he was contradicted by his only witness in several particulars, and his story was not supported by the original deed of partnership or the payment of the contributions, it was *held* that the proceedings must be quashed as the materials before the Magistrate disclosed no offence *Jagat Chandra Muzumdar* v. *Queen-Empress, I. L. R 26 Calc 786, Choa Lal Dass* v. *Anant Pershad Misser, I. L. R. 25 Calc. 233*, and *Chandi Pershad* v. *Abdur Rahaman, I. L. R. 22 Calc. 131*, referred to. *Semble* A title page in an account book containing the names and the amount of the capital contributed by each is, if signed by them, a "valuable security" within s 30 of the Penal Code. HARI CHARAN GORAIT *v.* GIRISH CHANDRA SADHUKHAN (1910) I. L. R. 38 Calc. 68

JURISDICTION OF HIGH COURT.

See EQUITABLE MORTGAGE. I. L. R. 38 Calc. 824

See EXTRADITION ACT, 1903, ss 3, 4. I. L. R. 38 Calc. 547

See INJUNCTION L. R. 38 Calc. 405

1. ———— **Revision**—*Appeal wrongly laid before Collector instead of District Judge—Procedure by Deputy Collector under s 109 of the Rent Recovery Act—Civil Procedure Code, how far governs Act X of 1859—Act X of 1859, s 109—Civil Procedure Code (XIV of 1882), s 310A.* The High Court has jurisdiction to interfere with the orders of the Collectors and Deputy Collectors, passed under Act X of 1859 *Huro Mohun Mookerjee* v. *Kedarnath Doss, 5 W. R., Act X, 25*, commented on. *Bhyrub Chunder Chunder* v. *Shama Soonderee Debea, 6 W. R., Act X, 68, Gobind Coomar Chowdhry* v. *Kisto Coomar Chowdhry, 7 W. R. 520, Deanutoollah* v. *Nowab Nazim Sidhee Nuzzer Ali Khan Bahadoor, 10 W. R. 341, Guladhur Chatterjee* v. *Nund Lall Mookerjee, 12 W. R. 406, Sreemutty Nassir Jan* v. *Akbar Mozoomdar, 15 W. R. 418, Nilmoni Singh Deo* v.

JURISDICTION OF HIGH COURT— *contd.*

Taranath Mukerjee, I. L. R 9 Calc. 295, referred to. *Mohant Gobind Ramanuja Das* v. *Lukhun Parida, 11 C. W. N 112*, explained The jurisdiction of the Deputy Collector under Act X of 1859 being a limited one, and the procedure under s. 109 of the said Act not being *strictly* followed, a sale under s. 109 must be held to be *ultra vires. Deanutoollah* v. *Nowab Nazim, 10 W R 341*, referred to Except upon points expressly provided for by Act X of 1859, the procedure of the Revenue Courts must be governed by the Civil Procedure Code. The *ratio decidendi* of *Nilmoni Singh Deo* v. *Taranath Mukerjee, I L. R. 9 Calc 295*, followed. *Harish Chandra Ghose* v *Ananta Charan Patra, 2 C W N 127*, doubted. *Adhiani Narain Kumari* v. *Raghu Mohapatro, I L R 12 Calc. 50*, approved *Radha Madhub Santra* v *Lukhi Narain Roy Chowdhry, I L. R 21 Calc 428*, and *Mokunda Bullav Kar v. Bhogaban Chunder Das, I. L. R 21 Calc 514*, discussed *Nogendro Nath Mullick* v. *Mathura Mohun Parhi, I L R 18 Calc. 368*, explained *Hare Krishna Mahanti* v. *Bishnu Chandra Mahanti, I. L R. 35 Calc. 799, Ram Lochan Singh* v *Beni Prasad Kumri, I L. R 36 Calc 252*, and *Madho Prakash Singh* v *Murli Manohar, I. L R 5 All 406*, referred to. Where a sale under Act X of 1859 is impeached as *ultra vires* and illegal or the sale is rightly sought to be set aside under s 310A of the Code of Civil Procedure (XIV of 1882), the proceedings of the Deputy Collector are amenable to the revisional jurisdiction of the High Court in either case The fact that the original suit was valued at above R100 and an appeal lay to the District Judge and not to the Collector, before whom the appeal was, in reality, heard, does not take away the right of the High Court to interfere in revision. CHAITAN PATGOSI MAHAPATRA *v.* KUNJA BEHARI PATNAIK (1911) . . . **I. L. R. 38 Calc. 832**

2_____ Power to revise an order of acquittal at the instance of a private party —*Decision on a point of local jurisdiction and not on the merits—Criminal Procedure Code (Act V of 1898), ss 432, 439 (5)—Practice.* S 439 (5) of the Criminal Procedure Code does not bar the jurisdiction of the High Court to interfere with an order of acquittal on an application made at the instance of a private party Where the Appellate Court set aside a conviction and sentence on the ground that the place of occurrence was outside the local limits of the trying Magistrate's jurisdiction, overlooking the provisions of s 531 of the Code, the High Court set aside the order of acquittal and directed a re-hearing of the appeal. What the Appellate Court has to find is whether the offence, of which an accused is convicted, has been made out, not with reference to any dispute as to jurisdiction, but on the merits and in accordance with the evidence. KANGALI SARDAR *v.* BAMA CHARAN BHATTACHARJEE (1911) **I. L. R. 38 Calc. 786**

3. _____ Letters Patent, High Court, cl. 12—" *Dwelling" within the jurisdiction of the Court—Executor, liability of—Repudiation of will—Executor and trustee setting up adverse title to property disposed of by will—Estoppel—Removal of trustee and executor from office—Joint and acquired property* This was a suit on the Original Side of the High Court by three of the executors and trustees of a will against the fourth executor and trustee (who was the son of the testator) for the removal of the defendant from his office and for administration of the estate by the Court. Probate had been granted to the executors by the High Court at Madras and the assets realised under the grant had come into the possession of the defendant who subsequently repudiated the will and alleging that the property of the testator was joint claimed in this suit to be entitled to the estate by survivorships The defendant was domiciled and resided in the State of Mysore, but some months previously to the institution of the suit he left his house there in charge of a servant, and hired a house in Madras to which he brought his wife and family, and apprenticed himself for a year to a vakil of the High Court with a view to become in due course enrolled as a vakil himself. He was in Madras on 30th April, 1901, when the plaint was filed, but left on 31st before the summons was served. The first Court made a decree removing the defendant from his office as executor and trustee which was affirmed by the High Court, and both Courts decided that the cause of action arose partly within the jurisdiction of the Court, and that the Court could therefore entertain the suit *Held* (affirming the decision of the High Court), that the defendant was at the time the suit was brought " dwelling " within the jurisdiction within cl 12 of the Letters Patent of the High Court. *Held*, also, that no person who has accepted the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself On the question whether the property dealt with by the will was joint or acquired, their Lordships of the Judicial Committee also agreed with the Courts below that on the evidence it was self-acquired and that the testator therefore had power to dispose of it as he had done in the will SRINIVASA MOORTHY *v.* VENKATA VARADA AIYANGAR (1911) **I. L. R. 34 Mad 257**

JURY.

See CRIMINAL PROCEDURE CODE, SS. 462 (3), 537 . **I. L. R. 33 All. 385**

_____ verdict of —

See DACOITY . . **15 C. W. N. 434**

_____ Misdirection in the charge—*Omission to bring certain facts to the notice of the jury, vitiating the charge—First information—Evidentiary value of—Jury, questioning after verdict.* A Sessions Judge is not justified in questioning the jury after they have given an unanimous verdict in respect of one of the offences included in the charge. It

JURY—*concld.*

is a misdirection when the Judge asks the jury to accept the statement in the first information in preference to the evidence in the case. Where the defence in cross-examining a prosecution witness asked whether two other men did not beat the deceased, and the accused in his written statement gave an account suggesting that he was not the culprit.—*Held*, that it was misdirection for the Judge to tell the jury that there was no suggestion that any one other than the accused was the culprit Where the charge to the jury ended abruptly with the statement: "no evidence adduced by the defence:"—*Held*, that if the Judge thought it necessary to put this fact so prominently to the jury, he was at least bound to qualify it by pointing out to the jury that the defence was not bound to call any evidence, that they could rely upon the prosecution evidence as far as it could help them and that they were entitled to the benefit of doubt, and that the omission of these qualifying statements constituted a misdirection. Where the medical evidence showed that the wound on the neck of the deceased was directed downwards and inwards from the left to the right side of the neck and it was proved that the accused was very much shorter than the deceased —*Held*, that the Judge ought to have drawn the attention of the jury to this fact and asked them to determine whether it was possible for the accused to have raised his hands to a sufficient height to strike downwards at the deceased's neck. Where the Judge after pointing out to the jury the Sub-Inspector's evidence that he found the accused and the other villagers absconding, wound up by saying "under the circumstances, can the jury doubt, &c.": *Held*, that this was a misdirection inasmuch as it was the duty of the Judge to tell the jury that absconding was a matter which was equally consistent with innocence as with guilt and that it could only be considered in connection with the rest of the evidence and it was for the jury to attach any weight to it which the rest of the evidence enabled them to do, but that it was in itself a circumstance of no weight. ASFAR SHEIKH *v* EMPEROR (1910)
15 C. W. N. 198

JUS TERTII.

See AGRA TENANCY ACT (II OF 1901), SS. 102 AND 198 . I. L. R. 33 All. 61

See AGRA TENANCY ACT (II OF 1901), S. 177 . . I. L. R. 33 All. 260

See CIVIL PROCEDURE CODE, 1908, S. 11, EXPL. VI . I. L. R. 33 All. 493

JUSTICES OF THE PEACE, POWERS OF.

——— **Trials of European British subjects.** The powers of Magistrates of the first class who are Justices of the Peace and European British subjects are the powers referred to in s. 36 of the Code of Criminal Procedure of 1898 as hereinafter conferred upon them and specified

JUSTICES OF THE PEACE, POWERS OF—*concld.*

in the third schedule and styled 'ordinary powers.' They do not include powers with which by virtue of s. 37 of the Code a Magistrate of the first class may be invested by the authorities mentioned therein. LOGAN *v.* ROMER (1910)
I. L. R. 34 Mad. 343

JUTE TRADE.

——— **usage of—**

See VENDOR AND SUB-VENDEE
I. L. R. 38 Calc. 127

K

"KETUBAH."

See JEWISH LAW.
I. L. R. 38 Calc. 708

KHUD-KASHT.

See LANDLORD AND TENANT
I. L. R. 38 Calc. 432

KILLADARI ESTATE (ORISSA).

See CHOWKIDARI ACT, S. 1.
15 C. W. N. 300

KILLAJAT ESTATES (ORISSA).

See RENT . I. L. R. 38 Calc. 278

KOWL.

See LAND REVENUE CODE (BOM. V OF 1879), S. 3, CL. (19).
I. L. R. 35 Bom. 462

L

LAMBARDAR AND CO-SHARER.

——— *Powers of lambardar —Lease of timber-bearing common land for the purpose of cutting the timber and making charcoal. Held*, that a lambardar has ordinarily no authority to grant leases of timber-bearing common land of the village to lessees for the purpose of having the timber cut and converted into charcoal. JAGANNATH PRASAD *v* RUSTAM ALI (1910)
I. L. R. 33 All. 17

LAND ACQUISITION.

See LAND ACQUISITION ACT.

See LAND ACQUISITION ACT (I OF 1894), SS. 9, 25 . . I. L. R. 33 All. 376

——— *Jurisdiction of High Court to review award of Land Acquisition Collector—Collector acting under s 11, if a "Court" and subordinate to the High Court—Land Acquisition Judge, powers of—Discovery—Interlocutory orders —High Court's powers to interfere with interlocutory orders—Land Acquisition Act (I of 1894), ss. 9, 10, 11, 18, 20, 21, 50, 53—High Court's Act of 1861, s. 15—Civil Procedure Code (Act V of 1908), s. 115,*

LAND ACQUISITION—*contd.*

O. XI, r. 12. The High Court has no jurisdiction to review an order made by the Collector under s 11 of the Land Acquisition Act as the Collector acting under that section is not a Court, but only an agent of the Government *Durga Das Rukhit* v *Queen Empress, I L. R 27 Calc. 820, Ezra* v *Secretary of State, I L R 30 Calc. 36 I. L R 32 Calc 605,* referred to *Administrator-General of Bengal* v *The Land Acquisition Collector, 12 C. W N 241, Lekhraj Ram* v. *Debi Pershad, 12 C W N 678, Abdool Ali* v. *Verner, 23 W R. 73, Luchmeswar Singh* v *The Chairman of the Darbhanga Municipality, I L. R 18 Calc. 99 L. R 17 I A 90,* distinguished. Civil Courts are not powerless to afford relief to a person aggrieved by proceedings taken in nominal compliance with statutory provisions *Rameswar Singh* v *Secretary of State for India, I L. R 34 Calc 470,* referred to. It is, however, doubtful how far and in what precise mode such relief can be claimed by the Secretary of State or a Corporation for whose benefit proceedings have been taken by the Government under the Land Acquisition Act The expression "any person interested" in s. 18 does not include the Secretary of State. *Attorney-General* v *Great Western Railway Company, 4 Ch D. 735,* referred to. The Court of the Land Acquisition Judge is a Court of special jurisdiction, the powers and duties of which are defined by statute, and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it *Shyamchunder Mardraj* v *Secretary of State for India, I. L R 35 Calc 525, Gajendra Sahu* v *Secretary of State for India, 8 C L J. 39,* distinguished It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector, to cancel it or to remit it to him to be recast, modified or reduced The Court of the Land Acquisition Judge is restricted to an examination of the question which has been referred by the Collector for decision under s. 18, and the scope of the enquiry cannot be enlarged at the instance of parties who have not obtained or cannot obtain any order of reference *Promotha Nath Mitra* v *Rakhal Das Addy, 11 C. L. J 420,* followed An order for discovery can be made in a case under the Land Acquisition Act, under O. xi, r. 12, Civil Procedure Code. *Kishen Chand* v. *Jagannath Prasad, I. L R. 25 All. 133,* referred to When, however, the right to discovery in any form depends upon the determination of any issue or question in dispute in a matter, or it is desirable that some issue or question of law or fact or mixed question of law and fact in dispute should be determined first, the question of discovery may be reserved till after the issue or question has been determined *Whyte* v. *Ahrens, 26 Ch. D. 717,* referred to The High Court is not powerless to set matters right when an interlocutory order has been made without jurisdiction or under such circumstances as are likely to cause irreparable injury to one of the litigants. *Gobind Mohun Doss* v. *Kunja Behary Doss, 10 C. L. J. 407,*

LAND ACQUISITION—*concld.*

referred to BRITISH INDIA STEAM NAVIGATION Co. *v* SECRETARY OF STATE FOR INDIA (1910)
I. L R. 38 Calc. 230

LAND ACQUISITION ACT (I OF 1894).

See INTEREST . **I. L. R 35 Bom. 255**

——— **ss. 9 to 21, 50, 53—**

See LAND ACQUISITION.
I L. R. 38 Calc. 230

——— **ss. 9, 25—***Omission to attend in answer to notice—Owner not entitled to claim more than what was awarded by the acquisition officer.* It is intended by s 9, cl. (2) of the Land Acquisition Act that the owner of property about to be acquired should appear and state his claim in the manner provided by the clause so as to enable the acquisition officer to make a fair, reasonable and proper award based upon a proper inquiry after the proper means have been placed before him for holding such inquiry. S 25, cl. (2), makes the refusal or omission to comply with the provisions of s 1 (2) without sufficient cause an absolute bar to the obtaining of a greater sum than that awarded by the Collector SECRETARY OF STATE FOR INDIA *v* BISHAN DAT (1911)
I. L. R. 33 All. 376

——— **s. 18—***Hereditary Offices Act (Bom Act III of 1874), ss. 10 and 13—Maharki Vatan land—Acquisition by Government—Award—Compensation—Title by adverse possession against Vatandars—Collector's certificate—Jurisdiction.* Certain land with buildings thereon having been acquired by Government under the Land Acquisition Act (I of 1894), the Assistant Collector passed an award whereby he awarded, by way of compensation, one sum to the owner of the buildings on the land and another to certain Mahar Vatandars on account of the land being Maharki Vatan. The owner of the buildings having objected to award, the Assistant Collector at the instance of the objector referred the matter to the District Court under s 18 of the Act The District Judge found that the objector had acquired title to the land by adverse possession and thus became entitled to the compensation on account of the land as against the Mahar claimants Subsequently the Collector forwarded to the District Court a certificate issued under s. 10 of the Hereditary Offices Act (Bom Act III of 1874) that the order for the payment of the compensation to the objector should be set aside in accordance with the provisions of ss. 10 and 13 of the Act Thereupon the District Judge holding that he had no jurisdiction to decide whether the property was Vatan or not in the face of the Collector's certificate cancelled his order. The objector having appealed against the said order. *Held,* restoring the award of the District Court, that an award under the Land Acquisition Act (I of 1894) was not a decree or order capable of execution under the Civil Procedure Code (Act V of 1908) and was therefore not within the purview of s. 10 of the Hereditary Offices Act (Bom. Act III of 1874). *Held,* further, that the award of the District Court

LAND ACQUISITION ACT (I OF 1894) —*concld.*

——— s. 18—*concld.*

which was the cause of the certificate made it clear that the Mahar's property had been acquired by the objector by adverse possession before the commencement of the proceedings for the acquisition of the land by Government *Per curiam* Even if it could be said that there was any danger of the passing of the ownership by virtue or in execution of a decree or order in the Land Acquisition proceedings it could not be said that that result was arrived at without the sanction of Government who set the machinery of the Act in motion for the acquisition of the land *Nilkanth* v *The Collector of Thana, I. L. R. 22 Bom 802, Collector of Thana* v. *Bhaskar Mahadev, I. L R. 8 Bom 264; Rachapa* v. *Amilgovda, I. L. R. 5 Bom. 283,* referred to. LADDHA EBRAHIM AND Co. *v* THE ASSISTANT COLLECTOR, POONA (1910) **I. L. R. 35 Bom. 146**

——— **s. 23—General principles of valuation.** Although in ascertaining the market-value of land sought to be acquired under Act No. I of 1894 the general principle to be applied is that the value of the land should be calculated with reference to the most lucrative and advantageous way in which the land might be used, if it is apparent that the use of such land for some special purpose, *e.g.*, as building sites, would be permitted, the land should not be valued as if could be utilized for such purpose *Stebbing* v. *Metropolitan Board of Works, L. R 6 Q. B. 37,* referred to. UJAGAR LAL *v.* THE SECRETARY OF STATE FOR INDIA (1911) . . . **I. L. R. 33 All. 733**

LAND ACQUISITION JUDGE.

See LAND ACQUISITION.

I. L. R. 38 Calc. 230

——— *Land Acquisition Judge, powers of—Order for discovery.* The Court of a Land Acquisition Judge is a Court of special jurisdiction, the powers and duties of which are defined by statute, and it cannot be legitimately invited to exercise inherent powers and assume jurisdiction over matters not intended by the Legislature to be comprehended within the scope of the enquiry before it. *Shyam Chunder Mardraj* v. *Secretary of State for India, I L. R. 35 Calc. 525, Gajendra Sahu* v. *Secretary of State for India, 8 C. L. J. 39,* distinguished. It was never contemplated by the statute to authorise the Land Acquisition Judge to review the award of the Collector, to cancel it or to remit it to him to be recast, modified or reduced The Court of the Land Acquisition Judge is restricted to an examination of the question which has been referred by the Collector for decision under s. 18, and the scope of the enquiry cannnot be enlarged at the instance of parties who have not obtained or cannot obtain any order of reference. *Promotha Nath Mitra* v *Rakhal Das Addy, 11 C L J. 420,* followed. An order for discovery can be made in a case under the Land Acquisition Act under O. XI, r. 12, Civil Procedure Code. BRITISH INDIA STEAM NAVIGATION Co. *v.* SECRETARY OF STATE FOR INDIA (1910) . . . . **I. L. R. 38 Calc. 230**

LANDHOLDER AND TENANT.

See LANDLORD AND TENANT.

LANDLORD AND TENANT

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I L R. 38 Calc 845

1. CHAUKIDARI CHAKRAN LANDS.

——— *Chakran lands—Resumption—Possession taken by putnidar—Ryots settled by putnidar if may be ousted by person taking settlement from zemindar—Recital in sale deed when estops vendee—Estoppel—Collateral statements in deed—Tenancy, if may be created by verbal settlement.* Where a conveyance of a putni taluk expressly recited that certain resumed chowkidari chakran lands appertaining to the putni taluk were retained by the vendor: *Held,* that the vendee was not estopped from claiming the chakran lands under a subsequent settlement thereof from the zemindar. By accepting a deed of conveyance in fee and going into possession a grantee is not estopped to deny the title or seizin of the grantor unless he claims under the deed. *Rup Chand Ghose* v. *Sarbessar Chandra, 10 C W. N. 747 : s.c. I. L. R. 33 Calc. 915 ; 3 C. L. J. 629,* referred to. The doctrine of estoppel does not extend to mere descriptive matters or statements or recitals which are immaterial and not contractual or essential to the purposes of thei nstrument. To give a recital to that effect it must be shown that the object of the parties was to make the matter recited a fixed fact as the basis of their action. The statement in question in the present instrument did not create an estoppel as it was essentially a collateral statement not concerning the direct purpose of the deed. When in pursuance of an agreement for a lease the intended lessee has taken possession though the requisite documents had not been executed the position is the same as it the document has been executed, provided specific performance can be obtained between the same parties in the same Court and at the same time as the subsequent legal question falls to be determined. Where a putnidar took possession of resumed chakran lands on the footing that they were included within the putni and he was entitled to hold them upon payment of such rent as might be assessed, and there were negotiations between him and the zemindar regarding the chakran lands; and the putnidar settled the lands

LANDLORD AND TENANT—*contd.*

1. CHAUKIDARI CHAKRAN LANDS—*concld.*

with the defendants who *bonâ fide* accepted a raiyati lease from him —*Held*, that the plaintiff who purchased the putni and then took settlement of the chakran lands from the zemindar with full knowledge that the defendants were in occupation as cultivating tenants was not entitled to rent and treat the defendants as trespassers. *Binad Lal Pakrashi* v. *Kalu Pramanik*, *I L. R. 20 Calc 708*, *Upendra Narain* v. *Protap Chandra*, *8 C W. N. 320*, *Jonab Ali* v. *Rakibuddin*, *9 C W. N. 571 s.c. 1 C. L. J. 393*, referred to. BEPIN BEHARI MITRA *v* TINCOURI PATHAK (1911) **15 C. W. N 976**

2. EJECTMENT.

1. ——————————— *Co-sharers—Notice to quit.* A notice to quit by some only of the co-sharers, is not sufficient to determine a tenancy *Gopal Ram* v *Dhakeswar*, *I. L. R. 35 Calc. 807*, followed. *Dœd. Aslin* v. *Summersett*, *I B & Ad 135*, not followed. SURENDRA NATH ROY *v.* KRISHNA SAKHI DASI (1910) . **15 C W. N. 239**

2. ——————————— *Presumption as to land-holder's right in the abadi agricultural village—House-site occupied by a person not an agriculturist nor one of the customary village servants or artizans —Adverse possession* In a village which was not a purely agricultural village, but in which, on the contrary, some two-thirds of the inhabitants were non-agriculturists, certain persons, father and son, were in possession of a house-site in the *abadi*. They carried on the occupation of innkeepers and sellers of tobacco, and there was no evidence of the origin of their possession or that they ever paid rent to the zamindar or acknowledged his title in any way. The site was sold by the son, and some time after such sale, the house or shop thereon having fallen down, the zamindar sued to eject the purchasers. *Held*, that in the circumstances of the case the defendants and their predecessors in interest, were properly held to have acquired a title to the site by adverse possession. *Chajju Singh* v. *Kanthia*, *All Weekly Notes (1881) 114*, and *Bhaddar* v. *Khair-ud-din Husain*, *L. R. 29 All. 133*, referred to. INCHA RAM *v.* BANDI ALI KHAN (1911) . **I. L. R. 33 All. 757**

3. FORFEITURE

1. ——————————— *Forfeiture clause contained in a decree—Execution proceeding—Power of the Court to grant relief.* The principle that Courts of equity will not forego their power to grant relief against forfeiture in the case of non-payment of rent where the relations of the parties are those of landlord and tenant, merely on the ground that the agreement between them is embodied in a decree of the Court, applies alike to a suit to enforce a decree and to proceedings in execution. *Krishnabai* v. *Hari*, *I. L. R. 31 Bom. 15*, explained. BALAMBHAT *v.* VINAYAK GANPATRAV (1910) **I. L. R. 35 Bom. 239**

LANDLORD AND TENANT—*contd.*

3. FORFEITURE—*concld*

2. ——————————— *Lease before Transfer of Property Act IV of 1882, forfeiture of—Suit for ejectment by landlord, maintainability of, without subsequent act evincing, intention to forfeit—Waiver—Claim for rent in suit for ejectment does not amount to waiver.* Under the law applicable to leases before the Transfer of Property Act, forfeiture is incurred when the denial of title occurs ; any subsequent act of the landlord electing to take advantage of the forfeiture, is not a condition precedent to the right of action for ejectment The bringing by the landlord of a suit for ejectment is simply a mode of manifesting his election Where a tenant, holding under a lease prior to the Transfer of Property Act, denies the title of his landlord, the landlord can maintain a suit for ejectment, without having done, prior to the suit, any act evincing his intention to determine the lease A claim for rent in the suit for ejectment will not amount to a waiver of the forfeiture. The election to forfeit is complete and irrevocable when the suit for ejectment is instituted. *Venkatramana Bhatta* v. *Govindarava*, *I. L. R 31 Mad 403*, considered. PADMANABHAYA *v.* RANGA (1910) . . **I. L. R. 34 Mad. 161**

3. ——————————— *Relationship of Landlord and tenant denied in previous rent suit, if can be urged in subsequent suit—Res judicata—Forfeiture of tenancy for denial of landlord's title under Bengal Tenancy Act (VIII of 1885).* Where in a suit for rent the defendants denied the existence of the relationship of landlord and tenant and got an adjudication to that effect, in a suit subsequently brought by the landlord for *khas* possession of the land on a declaration of his title : *Held*, that the question as to the relationship of landlord and tenant between the parties was *res judicata* and the defendant could not assert his title as tenant in such suit. *Debiruddi* v. *Abdur Rahim*, *I. L R. 17 Calc. 196* , *Dhora Kavri* v. *Ram Jewan*, *I. L. R. 20 Calc 101 ; Mallika Dassi* v. *Makham Lal Chowdhry*, *9 C. W. N. 923*, distinguished. *Seikh Madhar* v. *Rajani Kanta*, *14 C W. N. 339*, referred to. EKABBAR SHEIKH *v* HARA BEWA (1910) . . . . **15 C. W. N. 335**

4. LEASE.

1. ——————————— *Lease, construction of—Where rent in kind and in default a fixed price payable, if landlord can recover more than price specified—Money value put down for purposes of registration—Object if may be proved—Evidence Act (I of 1872), s. 92—Oral agreement to vary written contract, if admissible.* Where a *kabuliyat*, provided for the payment of rent partly in money and partly in kind and further provided that if the tenant neglected to pay the rent the landlord would be entitled to recover a certain sum as the price of paddy deliverable : *Held*, that, upon a true construction of the *kabuliyat*, the landlords would be entitled to realise only the

LANDLORD AND TENANT—*contd.*

4. LEASE—*contd*

amount stated in the *kabuliyat* as the price of the paddy on the failure of the tenants to deliver it Evidence to show that the money value was put in only for the purpose of registration and that thus the real intention of the parties was to realise the current price of paddy would be evidence of an oral agreement to contradict or substantially vary the terms of a written contract which is not admissible under s 92 of the Evidence Act. *Lakhatullu Sheikh* v. *Biswambhar Roy, 6 Ind Cas. 577 2 Ind Cas 160*, referred to *Sohobut Ali* v *Abdool Ali, 3 C. W. N. 151, Bipra Charan* v *Suchand Roy, 14 C W. N cc*[illegible], *Baneswar Mukherjee* v. *Umesh Chandra Chakravarti, 14 C. W. N cl*[illegible], not followed. *Saikh Ishaf* v. *Gopal Chandra Das, 14 C W. N c cii*, referred to AFAR *v* SURJA KUMAR GHOSE (1910) . . **15 C W. N. 249**

2. ——— *Leases, raiyati zurpeshgi and others—Cultivation of Indigo—Acquisition for right of occupancy—Nature of holding—Zeraat, khudkasht and private land of landlord—Notice to quit on expiry of lease—Suit to recover land leased—Bengal Tenancy Act (VIII of 1885), s 5, cl (5) and s. 116—Raiyat—Tenure-holder.* The appellants (plaintiffs) were the proprietors of the village of Ballipura Parsram ; and the owners of the Hathowri Indigo Concern (the predecessors in title of the respondent, defendant) and the respondent himself had been their tenants under various leases (raiyati, zurpeshgi and others) since 1837 for the cultivation of indigo. To a suit brought to recover two areas of land of 156 bighas and 25 bighas respectively, on the ground that the latest leases (of 21st October 1891 and 10th February 1892) under which they were respectively held, had expired, the respondent pleaded as to the larger area that he had acquired occupancy rights, and that even assuming he had not acquired such right a notice to quit was necessary under s 45 of the Bengal Tenancy Act (VIII of 1885) before he could be ejected. The latter defence alone was set up as to the smaller area The Subordinate Judge held, on the construction of the various leases, that the larger area was the appellants' private land in respect of which therefore (within the meaning of s. 116 of the Bengal Tenancy Act) the respondent could not acquire a right of occupancy and (acting on the presumption under s 5, cl. (5) of the Act, and on an admission that the smaller area was the private land of the appellants) he decided that the respondent was a tenure-holder and not a raiyat in respect of all the land in suit, and that he could be ejected without notice to quit. The High Court on appeal reversed that decision, holding as to the larger area that the presumption under s. 5, cl (5) of the Act had been rebutted, and that respondent was a raiyat and not a tenure-holder, and (notwithstanding the admission) came to a similar conclusion as to the smaller area ; and decided that the respondent had acquired rights of occupancy in both areas of land, and a notice to quit was necessary before ejectment. *Held* (by the Judicial Committee), that on the construction of the leases and under the circumstances of the case the High Court had rightly decided as to the larger area, but were wrong in going behind the admission made as to the smaller area. *Bengal Indigo Company* v. *Roghobur Das, I. L. R 24 Calc. 272 L. R. 23 I A. 158*, distinguished, on the ground that in that case there was no finding of fact to rebut the presumption under s 5, cl (5) of the Bengal Tenancy Act. DAMODAR NARAYAN CHOWDHRI *v.* DALGLIESH (1911) . . . **I L R. 38 Calc. 432**

3. ——— *Sub-lessee—Avoidance of lease—Vacant possession—Holding over—Transfer of Property Act (IV of 1882), s. 108.* The plaintiffs were lessees of a godown for one year from 1st April 1908, at a monthly rent From 1st May 1908 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar On 5th December the godown was partially destroyed by fire, and a quantity of sugar therein considerably damaged. The defendant's insurers came in to take charge of the salvage, but soon after sold the remains of the sugar to *G M*, and the latter then took possession, and continued in possession, sorting the sugar until 16th February 1909 Meanwhile on 10th December the plaintiffs had written to the landlord advising him of the fire and of their termination of the lease in consequence The landlord, however, insisted on their liability to pay rent until such time as vacant possession should be given to him. The defendant, in answer to a bill for rent, wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire, and would not pay more than the proportionate rent for the first 5 days of December As, however, vacant possession was not given until 16th February (on which day *G M* went out of possession), the plaintiffs sued the defendant for rent and for use and occupation. *Held*, that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession If the avoidance of the lease under s. 108 (*e*) of the Transfer of Property Act (IV of 1882) was effectual without surrender of vacant possession, the plaintiffs by failing to give vacant possession were holding over after the termination of their lease and were liable for rent under an implied monthly tenancy on the same terms as before. If the avoidance was ineffectual, the lease continued until put an end to by mutual consent. *Held*, further, that the abandonment to the insurers by the defendant was effected for his benefit, and in the absence of evidence that the insurers and their vendee *G M* kept the sugar in the godown in spite of protests by the defendant, the latter (as between the plaintiffs and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over. SIDICK HAJI HOOSEIN *v.* BRUEL & Co (1910) . **I. L. R. 35 Bom. 333**

LANDLORD AND TENANT—*contd.*

4. LEASE—*concld.*

4. ——————— *Amalnamah, construction of—A present demise or an agreement to make a future demise, a question of intention—Bengal Tenancy Act (VIII of 1885), ss. 10, 78, 155, 178, sub-s. (1), cl. 8—Waste land—Notice if necessary to terminate a lease of—Lessee of waste lands if may be ejected except in execution of decree—Registered lease, omission of the landlord to give, if effects tenants' position.* The question whether an instrument made a present or merely an agreement to make a future demise must depend upon the paramount intention of the parties *Parmanan Das* v. *Dharsey Virji, I. L. R. 10 Bom 101, Jones* v. *Reynolds, L. R 1 Q. B. 506, 516; Chapman* v. *Towner, 6 M. & W. 100, 104,* referred to. Where an *amalnamah* granted in 1313 recited that the defendant had applied for a *mourasi mokurari chukdari* lease from the plaintiff and that in anticipation of the execution of a proper lease the plaintiff had agreed to place the defendant in possession of the land on certain conditions, *viz*, that out of R2.000 payable as premium R500 would be paid in Magh 1311 and the remainder by three equal annual instalments, that in default of such payment the *amalnamah* would stand cancelled and cease to be operative, and that in 1312 and 1313 the lands should be held rent-free and that rent at specified rates would be payble in respect of the lands in subsequent years and the instrument further provided that in 1312 the defendant would bring under cultivation 200 bighas of land, and that the whole would be brought under cultivation in 1313 and that in the event of a failure to cultivate the lands in 1312 and 1313 the grantor would be at liberty to reenter and settle the land with other tenants :—*Held*, that there was a present demise by the *amalnamah* and not an agreement to make a future demise. *Semble* : The position of the tenant under such circumstance would not in substance be affected by the failure of the landlords to execute a registered lease in favour of the tenant *Bibi Jauahir Kumari* v. *Chatterput Singh, 2 C. L. J. 343, Singheeram* v *Bhagbat Chander, 11 C. L J. 543,* referred to. *Held*, that s 178 of the Bengal Tenancy Act does not operate to make s. 155 of the Act inapplicable to the case of a tenant of waste lands, who cannot therefore be ejected without notice under s. 155 being served on him. *Held*, further, that under s. 178, sub-s. (1), cl (*8*) read with s. 89 and s. 10, the landlord had no right to eject the tenant in the circumstances of the case except in execution of a decree. CHAMPAKALATIKA MITRA *v.* NAFAR CHANDRA PAL CHOWDRY (1910) **15 C W. N. 536**

5. MULGENI TENURE.

——————— *Landlord and Tenant—Mulgeni tenure—Revenue assessment, who to pay—Revenue Recovery Act II of 1864, ss, 1 and 35—Principles apart from Act* Under s. 35, Revenue Recovery Act, a mulgenidar who pays revenue due on land held by him as a mulgeni tenant is entitled to recover the same from his landlord, the mulgar, by deducting the amounts so paid from any rent then or afterwards due from him to the mulgar. The fact that the mulgar's revenue assessment has been increased by Government does not make him the less liable to pay the whole assessment although the amount so to be paid may be in excess of or out of proportion to the rent to be received by him. To hold otherwise would be to deprive the mugenidar of the right secured to him by s. 35 of the Revenue Recovery Act *Per* BENSON, *J.*—Apart, however, from the Revenue Recovery Act which thus indirectly and as it were unintentionally imposes the whole burden on the pattadar it cannot be held that where an increased revenue assessment has not been contemplated in the mulgeni chit either the mulgar or the mulgenidar is bound to pay the whole of the increase in assessment imposed by Government. Assessment is a burden imposed by Government on the land and where the rent has been fixed by contract and the imposition of a higher assessment by Government is a matter outside the terms of the contract altogether and is not provided for in it either expressly or impliedly, it ought in accordance with principle, to be shared by the mulgar and the mulgenidar in proportion to the benefit which each derives from the land. VIDYAPURNA THIRTHASWAMI v. UGGANNU (1910) **I L R. 34 Mad. 231**

LANDLORD AND TENANT—*contd.*

5. MULGENI TENURE—*concld.*

6 RELINQUISHMENT.

1. ——————— *Joint tenants, surrender by one of her share, if operative against the other—Relinquishment to take effect at a future date, if inoperative* A relinquishment made in favour of the landlord by one of two co-tenants so as to effect her share is valid A relinquishment is not inoperative, because it was to take effect at a subsequent date. KUBIR MUNSHI *v* BAIKUNTA CHANDRA SHAHA (1910) . **15 C. W N. 680**

2. ——————— ——— *Occupancy tenant—Usufructuary mortgage—Relinquishment of tenancy during the term of the mortgage. Held*, that an ocupancy tenant who has made a usufructuary mortgage of his holding and put the mortgagee in possession cannot during the subsistence of such mortgage relinquish his holding to the prejudice of the mortgagee's rights *Rannu Rai* v *Rafi-ud-din, I. L. R. 27 All. 82,* followed. CHHOTE LAL *v* SHEOPAL SINGH (1905) **I. L. R. 33 All. 335**

7. RENT.

1. ——————— *Co-owners—Receipt for rent collusively given to tenant by one co-owner—Rights of the others to sue tenant and remaining co-owner for rent* *W* and others were co-owners of a shop which was let to *U*. The other co-owners, suspecting *W*'s good faith, gave notice to *U* forbidding him to pay rent to *W*. They then

LANDLORD AND TENANT—*concld.*

7. RENT—*concld.*

commenced proceedings for partition of the shop. Subsequently *W* executed in favour of *U* a receipt for arrears of rent and for a further sum alleged to represent rent paid in advance. *Held*, that in the above circumstances the co-owners other than *W* were entitled to sue the tenant and *W* for their proportionate share of the rent, their allegation being that the receipt referred to above was fictitious and collusive. *Doorga Churan Surma* v. *Jampa Dassee, 12 B. L. R. 289*, referred to ZIA-UD-DIN *v* MUHAMMAD UMAR (1910)

I. L. R. 33 All. 308

2. ——— *Contract Act (IX of 1872), s 43—Joint promise, interpretation of—Joint and several liability when arises—Joint heirs of original tenant, if jointly and severally liable—Where suit for rent dismissed against two of three joint tenants who did not admit the rate of rent, if landlord can recover entire rent from one who admits rate of rent.* Whether a promise is joint or several or joint and several is a question of construction depending upon the intention of the parties to a contract In cases of joint and several promises in addition to several persons joining in a promise to another there is a promise by each to the others and of each of them separately to the promise. It cannot therefore be affirmed as an inflexible rule that in every case where *A* lets out land jointly to *B* and *C* there is a promise that each of them will be responsible for the entire rent so that the landlord may recover against any one of them At any rate where several persons jointly inherit a tenancy any one of the heirs cannot be made separately liable for the entire rent. Where out of three joint tenants who were representatives of one original tenant there was an admission by one in favour of the rate of rent claimed by the landlord, but the admission was held to be inadmissible against the other tenants and the suit against the other two was dismissed:—*Held*, that the landlord could not recover the entire rent from the tenant who admitted his rate of rent The suit was dismissed as against him also. *Quære:* Whether a landlord may make one of several joint tenants responsible for the whole rent. KASI KINKAR SEN *v.* SATYENDRA NATH BHADRA (1910)

15 C. W N. 191

LANDLORD AND TENANT ACT (X OF 1859).

——— s. 108—*Sale of under-tenure in contravention of—Suit to set aside sale—Bonâ fide purchaser, if protected when sale without jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 244, 311, if apply* Ss. 244 and 311 of the Civil Procedure Code (Act XIV of 1882) have no application to cases arising under Act X of 1859 Where, therefore, an under-tenure was sold in contravention of the provisions of s. 108 of that Act, without execution having been taken out against the moveable properties of the judgment-debtor:—*Held*, that a suit lay to set aside the sale as being without

LANDLORD AND TENANT ACT (X OF 1859)—*concld.*

——— s. 108—*contd.*

jurisdiction notwithstanding that the purchaser might have been a stranger. *Zain-ul-abdin* v. *Ashgar, L. R. 15 I. A. 12*, distinguished DAMODAR MISRA *v* ISWAR CHANDRA CHOUDHURI

15 C. W. N. 78

LAND REGISTRATION.

——— *Estoppel against Act of Legislature—How far ss. 78 and 81 of the Land Registration Act (Beng VII of 1876) affect s. 60 of the Bengal Tenancy Act—Estoppel—Land Registration Act (Beng. VII of 1876), ss. 78, 81—Bengal Tenancy Act (VIII of 1885), s. 60.* There can be no estoppel against an act of the Legislature. *Jagabundhu Saha* v *Radha Krishna Pal, I. L. R. 36 Calc. 920*, followed S. 60 of the Bengal Tenancy Act governs a suit for rent where the plaintiff claims rent as proprietor of an estate though rent is sought to be realised on the basis of a contractual obligation. The restrictions imposed by s. 81 upon s 78 of the Land Registration Act cannot be incorporated by implication into s 60 of the Bengal Tenancy Act. The plaintiff, an unregistered part-proprietor of an estate, is not entitled to succeed as against the defendant, who, relying upon s. 60 of the Bengal Tenancy Act, has established that his debt has been discharged by payment of rent to the registered proprietor. ABDUL AZIZ *v* KANTHU MALLIK (1910)

I. L. R. 38 Calc. 512

LAND REGISTRATION ACT (BENG. VII OF 1876).

——— ss. 42, 53, 88

See FALSE EVIDENCE.

I. L. R. 38 Calc. 368

——— ss. 78, 81

See LAND REGISTRATION.

I. L. R 38 Calc. 512

LAND REVENUE CODE (BOM. ACT V OF 1879).

See GUJERATH TALUKDARS' ACT (BOM. ACT VI OF 1888), s 31.

I. L R. 35 Bom. 97

——— s. 3, cl. (19)—*Village of Ghatkooper—Kowl (lease) for 99 years—"Alienated" village—Agricultural lease—Buildings erected by occupiers on their respective lands—Extra assessment levied by Government—Right to levy extra assessment not parted with under the kowl.* The *kowl* (lease) of the village of Ghatkooper in the Thana District granted by Government on the 31st December 1845 for 99 years provided *inter alia* that the grantee should pay to Government annually a fixed sum with respect to the land which had already been under cultivation and " that as to waste lands, the grantee should bring them all into cultivation within 40 years and on the expiration of that period

LAND REVENUE CODE (BOM. ACT V OF 1879)—*contd.*

——— s. 3—*contd.*

the full assessment, according to the prevailing usage of the country should be collected annually from the grantee on such quantity as might remain waste out of the present waste, entered in the public accounts" The *kowl* further provided that "In respect of the abovenamed village you (grantee) are to consider yourself as a farmer thereof You are therefore to exercise the authority vested in farmers by Chapter VI of Regulation XVII of 1827 or such as may hereafter be vested in them by any new enactment, shall also be exercised by you, and in the event of your acting contrary to the above-said enactments, you will be subject to such penalties as are now or may hereafter be provided for by Regulations." Subsequently some of the occupants of the village having built upon their respective lands, Government levied extra assessment from them under the provisions of the Bombay Land Revenue Code (Bom Act V of 1879). The grantee under the *kowl* himself claimed the right to levy extra assessment on the ground that the village was an "alienated" village within the meaning of cl (*19*) of s. 3 of that Code and was, therefore, not liable to the provisions of the Code He, therefore, applied to Government for a refund either wholly or in part of the extra assessment collected by them and the Government having refused to grant his request, he brought a suit against the Secretary of State for India in Council praying (i) for a declaration that (*a*) the extra assessment imposed by the defendant upon lands appropriated for building sites in the village was illegal, (*b*) the Bombay Land Revenue Code (Bom Act V of 1879) was not applicable to the village, and (*c*) the resolution of Government to the effect that the *kowl* was agricultural was erroneous, (ii) that the defendant be restrained by a permanent injunction from levying the extra assessment, (iii) that in the event of its being found that the Government were entitled to levy the assessment, it be declared that the plaintiff was entitled to receive the same, and (iv) that the amount, if any, received by the defendant on account of such assessment be awarded to him The Court dismissed the suit. *Held*, on appeal, that having regard to the terms of the *kowl* it was a lease of the revenues of the village on certain conditions. The object of the lease was agricultural and Government never parted with their rights so far as the right to build was concerned. The *kowl* was no more than a lease The Government parted with their rights as lessors in favour of the grantee as lessee and imposed upon him certain conditions, none of which brought the contract within the definition of the term "alienated" village in cl. (*19*) of s 3 of the Bombay Land Revenue Code (Bom. Act V of 1879). The clause in the *kowl*, that the grantee was to consider himself a farmer of the village and was to "exercise the authority vested in farmers by Chapter VI of Regulation XVII of 1827 or such as may be hereafter vested in them by any new enactment shall be exercised by you and you will be subject to such penalties as are now or may hereafter be provided for by Regulations," brought the village within the operation of the provisions of the Bombay Land Revenue Code (Bom Act V of 1879) HAJI ABDULLA *v.* SECRETARY OF STATE FOR INDIA (1911) **I. L. R. 35 Bom. 462**

LAND REVENUE CODE (BOM. ACT V OF 1879)—*concld*

——— s. 3—*concld.*

——— s. 79A—*Gujarat Talukdari Act (Bom Act VI of 1888)—Collector, powers of—Summary eviction—Persons in wrongful possession—Possession under a decree of Civil Court—Discretion of Collector—Jurisdiction of Civil Court to examine the order.* The Talukdari Settlement Officer of Gujarat in exercise of his powers as Collector under s 79A of the Land Revenue Code (Bom Act V of 1879) authorised the summary eviction of a person who was in possession of land under the decree of a Civil Court In a suit brought to set aside the order:—*Held*, that the powers given by s 79A of the Land Revenue Code, 1879, could only be exercised in cases of wrongful possession *Held*, also, that no finality was given to the Collector's decision by the Land Revenue Code or Gujarat Talukdari Act; and the jurisdiction of the Civil Court to decide whether the person evicted was in rightful possession was not excluded TALUKDARI SETTLEMENT OFFICER, GUJARAT *v.* UMIASHANKAR NARSIRAM PANDYA (1910) . **I. L. R. 35 Bom. 72**

LATHI PLAY.

——— association for, if seditious—

See CONSPIRACY TO WAGE WAR
15 C. W. N. 593
I. L. R. 38 Calc. 559

LEASE.

See LAMBARDAR AND CO-SHARER.
I L. R. 33 All. 17

See LANDLORD AND TENANT.
I. L. R. 38 Calc. 432
I. L. R. 35 Bom. 333

See LANDLORD AND TENANT—LEASE.

See LAND REVENUE CODE (BOM. V OF 1879), s. 3 (*19*).
I. L. R. 35 Bom. 462

See MINERAL RIGHTS.
I. L. R. 38 Calc. 845

See MORTGAGE . **I. L. R. 35 Bom. 371**

See SURVEYS AND BOUNDARIES ACT, s. 12 . . **I. L. R. 34 Mad. 108**

——— *Tarwad—Lease by senior member alone—Validity of.* A lease by the senior member of a tarwad alone is valid. *Koroth Amman Kutti* v. *Perungottil Appu Nambiar, I. L. R. 29 Mad. 322*, explained and distinguished. CHAKKANTAVIDA CHAKKAN ABDULLA *v.* THAZHATH CHEEKKOOTTI (1910) . **I. L. R. 34 Mad. 245**

LEASE IN PERPETUITY.

See HINDU LAW—ENDOWMENT.
I. L. R. 38 Calc. 526

LEGAL NECESSITY.

See HINDU LAW . I. L. R. 38 Calc. 721

See HINDU LAW—DEBT
I. L. R. 33 All 242 ; 255

LEGAL PRACTITIONER.

See LEGAL PRACTITIONERS ACT.

——— *Legal Practitioner, dismissed for misconduct, if may be re-admitted.* Where a legal practitioner has been dismissed for misconduct of any description, it is open to the High Court to re-admit him afterwards if he satisfies the Court that in the interval he has borne an unimpeachable character and may with propriety be allowed to return to practice The test to be applied to such cases is whether the sentence of exclusion has had the salutary effect of awakening in the delinquent a higher sense of honour and duty and whether in the interval his conduct had been so irreproachable that he might be safely entrusted with the affairs of his clients and admitted to the profession without the profession suffering degradation. Where, therefore, a mukhtear was dismissed upon conviction for a grave offence and it appeared that in a closely connected transaction he had sworn a false affidavit, and where in the petition for re-admission he had not made a full disclosure of his previous history, the Court in the exercise of its discretion refused the application *In re* ABIRUDDIN AHMED (1910)
15 C W. N. 357:
I L. R. 38 Calc. 309

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

——— s. 13 (*f*)—*Interpretation of clause—Words "other reasonable cause" explained—Ejusdem generis.* The words "for any other reasonable cause" in cl. (*f*) of s. 13 of Legal Practitioners' Act (XVIII of 1879) include general misconduct and are not restricted to professional misconduct. Where two legal practitioners were the President and a Director respectively of a so-called Provident Society which was in no sense a Provident Society but a means of furnishing profit to the Directors by enabling those who so desired to gamble in the lives of parties who were willing to become "applicants" to the society :—*Held*, that there was "reasonable cause" under s. 13 (*f*) for an order being made against the legal practitioners. *Per* MILLER, *J.*—The principle of *ejusdem generis* cannot be applied to the words "any other reasonable cause" since the genus "professional misconduct" is not large enough to include the case of s. 12 (where pleader may be suspended or dismissed for having committed a criminal offence implying a defect of character which unfits him to be a pleader. *Tillmanns & Co.* v. *Knutsford, Ltd.*, [*1908*] *2 K. B. 385*, followed. The intention of the Legislature was to give to the High Court powers of control over pleaders and mukhtears as extensive as those which are given by the Letters Patent, s 10, over advocates and vakils *Per* KRISHNASWAMI AYYAR, *J.*—Cl (*f*) of s. 13 is not confirmed to professional misconduct but may be interpreted so as to include any dishonest or dishonourable conduct whether or not in discharge of professional duty. It is difficult to limit cl (*f*) to professional misconduct, because cl. (*b*) deals with "grossly improper conduct" in the discharge of professional duty and it is not possible to name any species of professional misconduct which does not fall within cl (*b*) itself. The fact that the Legislature has restricted the power of Subordinate Courts under s 14 of the Act is no reason for fettering the power of the High Court. *In re Ghalab Khan Mukhtear*, *7 B L. R. 179*, approved. *In re* SECOND-GRADE PLEADERS (1911) . . . . I. L. R. 34 Mad. 29

——— s. 14—*Reference arising out of criminal charge against mukhtear—Proceeding under the Act should be distinct from criminal proceeding—Procedure for enquiry to be strictly followed.* Where in the course of criminal proceedings against the mukhtear, a Reference, purporting to be made under the Legal Practitioners' Act, was made against him to the High Court : *Held*, that the procedure prescribed in s. 14 of the Act should have been strictly followed from first to last, and that not having been done, the Reference was bad. *Held*, further, that the proceeding under the Act must be separate and distinct and cannot be made part of the criminal proceedings. *In re* FAZALAR RAHAMAN (1911) . . . 15 C. W. N. 764

——— ss. 14, 40—*Mukhtear—Suspension by District Magistrate, before report to High Court—Right to be heard before suspension—Order for prosecution—Criminal Procedure Code (Act V of 1898), s. 476* A legal practitioner cannot be provisionally suspended pending investigation (under s 14 of the Legal Practitioners' Act) of a charge of misconduct brought against him, without being heard in defence under s. 40 of the Act and before a report has been submitted to the High Court in terms of s. 14 The "investigation" referred to in the section is investigation by the High Court Where upon a reference by the Sub-Divisional Officer relating to the conduct of a muktear in a case tried before that officer, the District Magistrate suspended the mukhtear and on a perusal of the records directed his prosecution under s. 182, Penal Code : *Held*, that the order of suspension was without jurisdiction. *Per* WOODROFFE, *J.*—That the order for prosecution could not be passed by the District Magistrate under s 476, Criminal Procedure Code ; as the proceeding not being properly before him was not a judicial proceeding *Per* CARNDUFF, *J.*—The District Magistrate was not acting in the course of a judicial proceeding. *In re* BAJRANGI SAHAI (1911) . . . 15 C. W. N. 269

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*concld.*

——— s. 28—*Pleader and client—Lien on client's moneys for fees agreed upon, if enforcable when agreement not in accordance with s. 28, Legal Practitioners' Act (XVIII of 1879).* An agreement between a pleader and his client in regard to fees for professional service which the pleader cannot sue on, owing to its not conforming to the provisions of s. 28 of the Legal Practitioners' Act, cannot also be relied upon in defence to an action by the client to recover moneys deposited in Court by the client and withdrawn by the pleader The plea of the pleader that he had a lien on the money to the extent of the fees agreed upon could not therefore be entertained. *Qu ie* · Whether the pleader could claim reasonable remuneration for his services in view of s. 28 of the Legal Practitioners' Act. KAMINI DEBI *v.* KHETTRA MOHAN GANGULI (1910) . . . . . **15 C. W. N. 681**

ss. 35, 36—Tout, order declaring a person—*Evidence to justify.* Where witnesses merely proved that a person declared by the District Magistrate to be a tout had been seen in Court looking after cases, one witness only saying that he had heard that the mukhtears regarded him as a tout: *Held*, that the evidence was clearly insufficient to justify the order of the District Magistrate. SUNDAR UPADHYA *v* THE PRESIDENT OF THE MUKHTEARS' ASSOCIATION, CHAPRA (1911) **15 C. W. N. 1000**

LEGAL REPRESENTATIVE

See HINDU LAW—REVERSIONER.
I. L. R. 33 All 15

LEGATEE.

——— right of, to sue—

See WILL . **I. L. R 38 Calc. 327**

LESSEE.

—— —— for years or for life—

See MINERAL RIGHTS.
I. L. R 38 Calc. 845

——— in perpetuity—

See MINERAL RIGHTS
I. L. R. 38 Calc. 845

LETTERS OF ADMINISTRATION.

——— —— *Presidency Insolvency Act (III of 1909), s. 108—Letters of administration, application by creditor—Debtor dying in insolvent circumstances.* Letters of administration may be granted to a creditor although the liabilities of the deceased debtor appear to be in excess of the assets. Application in the Insolvency Court is not the creditor's only remedy. *In the goods of* MAKHAN LALL CHATTERJEE (1911) . **15 C. W. N. 350**

LETTERS PATENT.

See CIVIL PROCEDURE CODE, 1908, s. 115.
15 C. W. N. 848

LETTERS PATENT—*concld.*

——— cl. 12—

See EQUITABLE MORTGAGE.
I. L. R. 38 Calc. 824

See JURISDICTION.
I. L. R. 34 Mad. 257

LEX LOCI CONTRACTUS.

See EVIDENCE . **I L. R. 33 All. 571**

LIBEL.

——— Statement in written statement —*Privilege—Party to judicial proceeding, statement by, in written statement—Absolute privilege—Qualified privilege—Rules of English Law, if applies in India—Penal Code (Act XLV of 1860), s. 499* Defamatory statements made in the written statements of a party to a judicial proceeding are not absolutely privileged in this country *Royal Aquarium* v. *Packinson, [1892] 1 Q. B. 451*, not followed *Auguda Ram Shaha* v *Nemai Chand Shaha, I L. R 23 Calc. 867*, followed. Qualified privilege on the ground that the defendant had an interest in the subject-matter of the communication and that the person to whom it was made had some duty to perform in the matter cannot be claimed in respect of such statements unless they fell within the exceptions to s 499 of the Indian Penal Code. SANDYAL *v.* BHABA SUNDARI DEBI (1910) **15 C. W. N. 995**

LICENSE.

See EXCISE ACT . **15 C. W. N. 169**

LIEN.

See CIVIL PROCEDURE CODE, 1882, ss 282, 287 . . **I. L. R. 35 Bom. 275**

See SOLICITOR'S LIEN FOR COSTS.
I L. R. 35 Bom. 352

LIMITATION.

See LIMITATION ACTS.

See ADVERSE POSSESSION.
I. L. R. 33 All. 224; 229; 443

See CIVIL PROCEDURE CODE, 1882, s 43·
I L. R. 33 All. 244

See CIVIL PROCEDURE CODE, 1882, ss. 230, 235 . . **I. L. R. 33 All. 517**

See CIVIL PROCEDURE CODE, 1908, s. 48, AND SCH. I, O. XXI.
I. L. R. 35 Bom. 103

See CIVIL PROCEDURE CODE, 1908, s. 60.
I L. R. 33 All. 529

See COMPANIES ACT (VI OF 1882), s. 169.
I. L. R. 33 All. 641

See EXECUTION OF RENT-DECREE
I. L. R. 38 All. 288

See GUJARAT TALUKDARS ACT, s 29 E.
I. L R 35 Bom. 324

LIMITATION—*contd*

See HINDU LAW—CONVERSION
I. L. R. 33 All. 356

See IDOL . . **I. L. R. 33 All. 735**

See LIMITATION ACT.

See LIMITATION ACT (XV OF 1877), S. 10
I. L. R 35 Bom. 49

See MORTGAGE **I. L. R. 38 Calc. 342**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 46 (4) **I L. R. 33 All. 738**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS 82 AND 100
I. L. R. 33 All 708

1. ———— **Hindu Deities**—*Suit for removal of Hindu Deities from one's custody to another's—Limitation Act (XV of 1877), Sch II, Arts 49, 120, 145.* A suit by *Thakurs* (deities) themselves for removing themselves from the custody of the defendants to the custody of the plaintiffs other than themselves is not a suit for a moveable property It would be a suit for which no provision is made in the Limitation Act, and would therefore naturally come under Art. 120 of Sch. II of the Act unless any other article also applied. Art. 49 has no application to such cases BALI PANDA *v* JADUMANI SANTRA (1910) . **I. L. R. 38 Calc. 284**

2. ———— **Agreement between joint trustees**—*If one of several joint trustees barred, the others also barred—Agreement between joint owners or trustees, effect of.* Two joint trustees *A* and *B* entered into an agreement, which recited that the families of *A* and *B* were entitled to the management of the trust and further provided that *N's* right shall after his death be exercised by his heirs and *B's* right shall be after his death be exercised by his heirs: *Held*, that the effect of this agreement was to constitute the heirs of *A* and *B* joint trustees and not to create a right in severalty between the two branches. Where an adult joint trustee takes no steps to protect the trust and his right to take steps becomes time barred, the rights of other joint trustees, even though minors, become time barred. THIYAGARAJA PILLAI *v* RATNASABAPATHI PILLAI (1910) . . . **I. L. R. 34 Mad. 284**

3. ———— **Execution of joint decree**—*Decree set aside as against one of several joint judgment-debtors against whom it had been ex parte—Decree passed subsequently against the exempted party—Civil Procedure Code, 1882, s 108—Order on a former application whether res judicata* A decree for sale on a mortgage was passed against several defendants jointly on the 25th August, 1900, and made absolute on the 21st December, 1901. As against one, defendant, however, the decree was *ex parte*, and it was set aside as against her on appeal on the 11th March 1902. Subsequently, a decree was passed on the merits against this defendant on the 15th August, 1902, and her appeal was dismissed by the High Court on the 16th November, 1904, and as against her that decree was made absolute on the 27th November, 1905. An application for execution was made against all the defendants on the 21st December, 1905, based on the decrees of the 25th August, 1900, the 15th August, 1902, the 16th November, 1904, the 21st December, 1901, and the 27th November, 1905 The defendants filed an objection to the application on the 7th February, 1906, alleging that they were no parties to the decrees of the 15th August, 1902, and the 27th November, 1905, and that, as to the decrees of the 25th August, 1900, and the 21st December, 1901, they were time barred *Held* (affirming the decision of the High Court), that the decrees of the 25th August 1900, and the 16th November, 1904, were steps in granting the plaintiff the relief to which he was entitled. The latter decree supplemented and completed the former, and for the first time justified the plaintiff in applying for the joint execution of the decree Time under the Limitation Act (XV of 1877) began to run from the date of the latter decree, or rather from the date it was made absolute—the 27th November, 1905, and consequently the application was not barred. *Held*, also, that the plaintiff was not estopped, in the present proceedings, by the order of the 27th November, 1905, dismissing his former application for execution of the 15th February, 1905, which was based on the decree of the 15th August, 1902, alone; whereas the present application was based on the joint effect of the two orders absolute of the 21st December, 1901, and the 27th November, 1905, which were in effect one decree of the latter date. The applications therefore were different and the former did not operate as a *res judicata* ASHFAQ HUSAIN *v* GAURI SAHAI (1911)
I. L. R. 33 All. 264

LIMITATION—*concld.*

LIMITATION ACT (XV OF 1877).

———— **s. 3, Sch. II, Arts. 13, 14**—*Civil Procedure Code, 1882, s 310A—Execution of decree—Suit involving the cancellation of an order setting aside a sale—Limitation.* A Civil Court acting under s. 310A of the Code of Civil Procedure, 1882, set aside a sale on an application made about 14 months after the sale. The auction-purchaser more than a year after this order sued for possession of the property and for a declaration that the order under s 310A was passed without jurisdiction. *Held*, that the order whether passed rightly or wrongly was not a nullity, and that the order having been passed in a proceeding other than a suit, Art 13 of the second schedule to the Indian Limitation Act, 1877, barred the present suit, inasmuch as the plaintiff could not obtain a decree for possession without first having the order set aside. KISHORI LAL *v* KUBAR SINGH (1910)
I L. R. 33 All. 93

———— **ss. 6, 12**—*Appeals under Indian Forest Act (V of 1882)—In calculating period of limitation for appeals under the Indian Forest Act, time for obtaining copy of judgment not to be excluded* The provision in s 12 of the Limitation Act of 1877 that in computing the period of limitation prescribed for an appeal the time requisite for obtaining a copy of the order appealed

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 6—*concld.*

against should be excluded does not apply to appeals under s. 10 of the Madras Forest Act, 1882. The express power given to the Governor in Council by s 10 of the Forest Act to extend the time for appeal under this section shows that the Legislature did not intend that the general provisions of the Limitation Act should apply to such cases The Madras Forest Act is a special and local enactment and the application of s 12 of the Limitation Act to appeals under that Act affects the period prescribed by that Act, within the meaning of s. 6 of the Limitation Act The provisions of s. 6 of the Limitation Act exclude the applicability of s. 12 of the Act in the case of appeals under s 10 of the Madras Forest Act. *Reference under the Madras Forest Act, 1882, I. L R. 10 Mad. 210,* dissented from. *Veeramma* v *Abbiah, I. L. R 18 Mad. 99,* followed VATTAKULAKARAN SOWDAKER ABU BACKER SAHIB *v* THE SECRETARY OF STATE FOR INDIA (1909) . **I. L. R. 34 Mad. 505**

——— s. 10—*Will—Trustees—Suit by testator's sister for declaration of heirship and ownership of the residue of testator's estate—Resulting trust arising by operation of law—Limitation* One Jethabhai died on the 7th December 1889 after having made a will dated the 20th February 1889 The will gave certain legacies, including one of ₹300, to the plaintiff, testator's sister. Under the will five trustees were appointed and it provided as follows :—" Out of these five (trustees), Dave Gavrishankar Kushalji and my nephew (plaintiff's son) Desai Mojilal Premanand should both join and take possession of my properties after my death in accordance with the above will, and with the consent of the remaining trustees, they are to dispose of the properties in accordance with what is written in the above will, and should any outstandings have to be recovered for giving effect to the said dispositions, they are to do the same and I do by this will give them power to do whatever else they may have to do to carry out the will." In the year 1906 the plaintiff having brought a suit for the declaration that she was the heir of the testator, her brother, and as such owner of the residue remaining after administering his property under the will and for the recovery of the residue, a question arose as to whether the suit was time-barred on the ground that there was no trust declared with regard to the residue and no direction given to distribute it among heirs at law *Held,* that the suit was not time-barred, and that once the testator's property was vested in the trustees for a specific purpose, it was not necessary that any resulting trust of the residue, which necessarily arose by operation of law, should be specified in words in the will in order to bring it within the scope of s. 10 of the Limitation Act (XV of 1877). MOJILAL PREMANAND *v.* GAVRISHANKAR KUSHALJI (1910) . . . **I. L. R. 35 Bom. 49**

——— s. 12—*Limitation Act (XV of 1877), ss. 4, 12—Appeal—Exclusion of time for taking copies —Decree signed after application—High Court—*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*concld*

Practice—Rule treated as appeal. An appellant is entitled to the deduction of the time between the delivery of the judgment and the signing of the decree Where the intending appellant having applied for certified copies of the judgment and decree, the copy of the judgment was delivered to him and at the same time an unused folio and the Court-fee filed for the copy of the decree were also returned because the decree had not been signed, and the applicant had to make a fresh application for a copy of the decree after it had been signed. *Held,* that the first application for a copy of the decree should be treated as pending all the time so that the applicant would be entitled to a deduction of the time between the signing of the decree and the date when the copy of the decree was ready to delivery. When application for copy is made before the decree is signed, the applicant is not entitled to a deduction of the time between the date of the application and the signing of the decree twice over when the same has been already excluded by reason of the decree not having been ready. *Beni Madhub Mitter* v. *Matungini Dassi, I. L. R. 13 Calc 104,* followed *Kali Sankar Bajpai* v. *Baikanta Nath Sen, 7 C W. N. 109,* and *Dulali Bewa* v *Sarada Kinkar Palit, 3 C. W. N. 55,* referred to. The rule in this case was treated as an appeal subject to the condition that the order passed would take effect on payment by the successful applicant of proper Court-fees. *Mahomed Wehiduddin* v. *Hakiman, I. L. R. 25 Calc. 757,* referred to. TARABATI KOER *v.* LALA JAGDEO NARAIN (1911) . . . **15 C W. N. 787**

——— s. 14—" *Court* "—*Interpretation—Court in British India—Court in a Native State in India not included.* The word " Court " as used in s. 14 of the Limitation Act (XV of 1877) means a Court in British India, and not a Court in a Native State of India. CHANMALAPA CHENBASAPA *v* ABDUL VAHAB (1910) **I. L. R. 35 Bom. 139**

1. ——— s. 19—**Acknowledgment, if gives fresh start to limitation for execution of decree**—*Step-in-aid of execution—Compromise to have part of decree executed at a later date.* Where upon a previous application for execution, the case was compromised by a joint petition stating that a part of the decree had been satisfied and that the rest will be satisfied at a future date . *Held,* that this was an acknowledgment of the judgment-debtor's liability which gave a fresh start to limitation under s 19 of the Indian Limitation Act. *Held,* further, that s 19 of the Limitation Act applies to applications for executions of decrees. *Rakhal Chander Tewari* v. *Hemangini Debi, 3 C. L. J. 347, Ram Kumar Kur* v. *Jakur Ali, I. L. R. 8 Calc. 716,* and *Toree Mahomed* v. *Mahomed Mahbood, I. L. R. 9 Calc. 739,* referred to. *Quære :* Whether a compromise made upon an application for execution, reciting that the decree has been executed in part and that the rest of it would be satisfied hereafter and containing no reference to any further proceedings to be

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*concld.*

taken in execution, is not a step-in-aid of execution. *Ghansham* v. *Mukh. I. L. R. 3 All. 320*, referred to. BINDESWARI KOER *v.* AWADH BEHARI LALL (1910) . . **15 C. W. N. 82**

2. ——— *Acknowledgement of debt by Collector or Deputy Collector as agent for Court of Wards saves limitation under—Regulation V of 1804, s. 2, Collector's powers under—Court of Wards, powers of* Under Regulation V of 1804 as amended by Madras Act IV of 1899 the duties of the Court of Wards are not limited to the education of the minor but include the due preservation of the estate. The Court of Wards has power to make an acknowledgment of a debt which would bind the ward and give a new starting point for limitation within the meaning of the Indian Limitation Act IX of 1877, s. 19. By the power of delegation given in s. 2 of Regulation V of 1804 the Collector has power to give such an acknowledgment as agent of the Court of Wards *Suryanarayana* v *Narendra Thatraz, I. L. R. 19 Mad. 255*, distinguished. *Beti Maharani* v *The Collector of Etwah, I L. R. 17 All 198*, commented on. No distinction can be drawn between the powers of a Collector and those of Deputy Collector. KONDAMODALU LINGA REDDI *v.* ALLURI SARVARAYUDU (1910) . **I. L. R. 34 Mad. 221**

3. ——— *Contract Act (IX of 1872), ss. 208 and 209—Suit to recover money—Acknowledgement by defendant's Gumasta (agent) after his death—Death of the defendant not known to plaintiff—Limitation.* Plaintiffs' firm had dealings with one Haji Usman from the 5th January 1901 till the 25th October 1903. Haji Usman's business was managed by a *gumasta* (agent). Haji Usman died in or about March 1903, and the plaintiffs had no knowledge of his death. On the 2nd June 1903 the *gumasta* wrote to the plaintiffs a post-card stating, "you mention that there are moneys due; as to that I admit whatever may be found on proper accounts to be owing by me; you need not entertain any anxiety." On the 30th May 1906 the plaintiffs brought a suit against the managers of Haji Usman's estate to recover a certain sum of money on an account stated. The defendants pleaded the bar of limitation on the ground that there was no acknowledgment of the debt by a competent person *Held*, that the suit was not time-barred. The *gumasta's* letter of the 2nd June 1903 was an acknowledgment within the meaning of s. 19 of Limitation Act (XV of 1877). The case fell within the provisions of ss. 208 and 209 of the Contract Act (IX of 1872). The termination of the *gumasta's* authority, if it did terminate, did not take place before the 2nd June 1903 as the plaintiffs did not know of the principal's death, and the *gumasta* was bound under s. 209 to take, on behalf of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him. EBRAHIM HAJI YAKUB *v.* CHUNILAL LALCHAND (1911) . . . **I. L. R. 35 Bom. 302**

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—

See MORTGAGE . **I. L. R. 38 Calc. 342**

See PARTIES . **I. L. R. 33 All. 272**

——— Sch. II, Art. 11—*Civil Procedure Code, Act XIV of 1882, ss. 278, 281, 283—Art. 11 of the Limitation Act not applicable where judgment-debtor no party to proceedings under s. 278 of the Civil Procedure Code* Where, in a claim proceeding under s. 278 of the Civil Procedure Code the judgment-debtor has not appeared and there has been no adjudication between him and the claimant, the period of limitation prescribed by Art. 11 of Sch. II of the Limitation Act will not apply to a suit brought by the defeated claimant to establish his right against the judgment-debtor. SADAYA PILLAI *v.* AMURTHATHACHY (1910) **I. L. R. 34 Mad. 533**

——— Sch. II, Art. 35—**Restitution of conjugal rights, suit for**—*Where, after demand and refusal differences are made up, time will not run until there is a fresh demand and refusal—Agreement between husband and wife, providing for future separation how far valid under Hindu and English law—The Madras Civil Courts Act, III of 1873, s. 16.* Where after demand by the husband and refusal by the wife to return to cohabitation, the parties make up their differences, limitation will not run under Art. 35 of Sch. II of the Limitation Act of 1877 until there is a fresh demand and refusal. *A*, a Hindu Brahmin, after refusal by his wife *B* to return, brought a suit for restitution of conjugal rights in 1903. The suit terminated in a compromise between *A* and *B* in July 1904, by which it was agreed that *B* should return and live with *A* and that if at any time thereafter she should desire to live apart from *A*, she was to be paid Rs 350 by *A*. *B* never returned to live with *A*, who on 6th July 1907, brought a suit for restitution alleging a demand and refusal in February 1907: —*Held*, that the suit was not barred under Art. 35 of Sch. II of the Limitation Act and that the demand and refusal prior to 1903 did not furnish the starting point for limitation:—*Held*, also, that the agreement between *A* and *B* in July 1904, providing for a future separation was invalid. It was forbidden by the Hindu Law, which ought, under s 16 of Madras Act III of 1873 to be applied in determining the marital obligations between the parties. *Tekait Mon Mohini Jemadat* v. *Basanta Kumar Singh, I. L R 28 Calc. 751*, referred to. Such agreement must also be considered as opposed to public policy and unenforceable. *Mherally* v. *Sakerkhanoobai, 7 Bom. L. R. 602*, referred to. Even under the English law, the agreement, providing for a future separation was invalid and would not operate as a bar to a suit for restitution of conjugal rights. KRISHNA AIYAR *v* BALAMMAL (1910) . . . **I. L. R. 34 Mad. 398**

——— Sch. II, Arts 39, 109—*Art. 109 not applicable where profits not received by defendant—Claim for mesne profits when plaintiff kept out of*

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Arts. 39, 109—*concld.*

possession is a suit for damages and falls within Art 39—Judgment for possession, effect of A suit for mesne profits by a plaintiff who had been kept out of possession by the defendant, does not, for purposes of limitation, fall within Art 109 of Sch. II of the Limitation Act, when no profits have been actually received by defendant Such a suit is one for damages for trespass on immoveable property and falls under Art 39 of Sch II *Abbas* v. *Fassuh-ud-Din, 24 Calc 463*, not followed A judgment for possession against a defendant must be deemed to decide that the defendant was in possession at least at the date of judgment. RAMASAMI REDDI *v* AUTHI LAKSHMI AMMAL (1909)

I. L. R. 34 Mad. 502

——— Sch. II, Arts. 49, 120, 145—

See LIMITATION . I. L. R. 38 Calc. 284

——— Sch. II, Arts. 61, 83, 116, 120—*Contract Act, IX of 1872, ss 70, 222—Suit by agent against principal to recover moneys spent by him falls under Art 61 of Sch II of the Limitation Act and not under Art. 116 or 120* The duty of the principal under s. 222 of the Contract Act to indemnify the agent is an obligation imposed by law and is attached to the relation of principal and agent constituted by act of parties Where a registered contract of agency does not provide for such indemnity, such obligation cannot be treated as a term or part of such contract and a suit by the agent for recovering moneys spent by him on account of his principal will not for purposes of limitation fall within Art 116 of Sch. II of the Indian Limitation Act. Art. 83 of Limitation Act will not apply; and even if it did, limitation will begin to run from the date of such payment and not from the termination of the agency The fact that the agent has under s. 217 a right of retainer out of sums received on account of his principal and a right of lien under s 222 will not postpone the right of action until the termination of the agency. The right of the agent to recover is conferred by s 70 of the Contract Act and there is nothing to prevent his making his claim immediately after he expended his own moneys. The article applicable to such cases is Art 61 of Sch. II of the Limitation Act. That article is not confined to cases where the defendant is under a legal liability to make the payment but is also applicable to cases falling under s. 70 of the Contract Act. KANDASWAMY PILLAI *v.* AVAYAMBAL (1910) . I. L. R. 34 Mad. 167

——— Art. 85—*Mutual account, test of.* Where the course of dealing between *A* and *B* was that *A* should finance *B* and that *B* should keep *H* secured in respect of such advances by consignments of coffee of a value equal to his indebtedness, the account between *A* and *B* though current and open is not " mutual " within the meaning of Art 85 of Sch. II of the Limitation Act Although the balance may shift from one side to the other, such shifting balance is not conclusive as a test of mutuality. Payments made on account by one party and credited by the other whether in money or goods do not render the account mutual. There must be independent obligations on both sides, to make the account mutual. *Hirada Basappa* v. *Gadigi Muddappa, 6 Mad H C. R 142*, referred to SHIVI GOWDA *v.* FERNANDES (1910)

I. L. R. 34 Mad. 513

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Art. 85—*concld.*

Sch. II, Art. 104—*Muhammadan law—Dower—Wife put into possession of husband's property in his lifetime and subsequently dispossessed—Suit by her heir for balance of dower debt—Limitation Held* that Art. 104 of Sch II of the Indian Limitation Act, 1877 (Art 104, Sch. I, Act IX of 1908) does not apply to a suit by one of the heirs of a Muhammadan widow, who, having been put into possession of her husband's property during his lifetime in lieu of her dower is dispossessed thereof subsequently to his death. HAMID-ULLAH KHAN *v* NAJJO (1911 I. L. R. 33 All. 568

——— Sch. II, Art. 110—*When arrear becomes due—Limitation runs under Art. 110 only from date when rent is ascertained by proceedings under Rent Recovery Act.* In the case of rents recoverable under the provisions of the Rent Recovery Act, such rents become ascertained only when they have been ascertained by means of the procedure provided by the Act In a suit brought by the tenants against their landlord for a declaration that the latter was not entitled to vary the terms of previous pattas, judgment in favour of the tenants was given by the High Court in August 1902 Prior to that date the landlord had instituted summary suits under the Rent Recovery Act against the tenants to enforce acceptance of pattas by them in respect of the same lands and the decision in those cases was given by the Sub-Collector in May 1904. The landlord tendered pattas as directed in the summary suits and brought suits for rent within three years from the date of the summary dicisions but more than three years from the date of the High Court judgment :—*Held*, in the circumstances, that the rent was ascertained and the arrears became due within the meaning of Art 110 of Sch II of the Limitation the date of the judgment in the summary suits and not on the date of the Act on judgment of the High Court. *Arunachalam Chettiar* v *Kader Rowthen, I L. R. 29 Mad 556*, distinguished *Rangayya Appa Rao* v. *Bobba Sriramulu, I. L. R 27 Mad. 143*, referred to. SYED GULAM GHOUSE SHA SAHIB *v.* SHUNMUGAM PILLAI (1910)

I. L. R. 34 Mad. 438

——— Sch II, Art. 120—*Limitation Act (XV of 1877), Sch. II, Arts. 120, 123—Suit by widow of Mahomedan for share against son who got order for grant of letters of administration but did not take out same—" Representative "—Time from which limitation runs* Where on the death of a deceased Mahomedan, a contest amongst his heirs as to who should take out letters of administration was decided in favour of the defendant No 1, but he did not furnish security and the order for grant of

LIMITATION ACT (XV OF 1877)—*contd.*

——— **Sch. II, Art. 120**—*concld.*

letters of administration was thus never completed. *Held*, that, if Art. 120 of Sch. II of the Limitation Act applied to a suit by one of the other heirs to recover her share from the defendant No 1 who was in possession, limitation ran at the earliest from the date of the decision of the Appellate Court affirming his right to take out letters of administration. *Quœre* The other members of the family of the deceased having also been joined as defendants, whether defendant No. 1 could be allowed to obtain for himself any advantage by urging that he never in fact became the legal representative of the deceased within Art. 123 of Sch. II of the Act, not having actually taken out letters of administration. FAYEZ ALI KHAN *v* SITARA BEGUM (1910)
15 C. W. N. 10

——— **Sch. II, Arts. 20, 123, 144**—*Period of Limitation applicable to suit by Muhammadan to recover his share of his deceased wife's estate* Art. 123 of Sch. II of the Limitation Act of 1877 applies only when the suit is for a share of an estate which it is the legal duty of the defendant to distribute. *Umardaraz Ali Khan* v *Milayat Ali Khan, I. L. R. 19 All. 169*, followed. Where a Muhammadan dies intestate his estate at once vests in his heirs as tenants in common and there is no one charged by law with its distribution. In a suit by one of the heirs to recover his share, Art. 123 of the Limitation Act does not apply. *Kasmi* v. *Ayesha-mma, I. L. R. 15 Mad. 60*, dissented from. Art. 144 will apply in the case of immoveables and Art. 120 when the property sought to be recovered is moveable. KHADERSA HAJEE BAPPU *v* PUTHEN VEETTIL AYISSA UMMAH (1910)
I. L. R. 34 Mad. 511

——— **Arts. 120, 144**—*Suit by Mahomedan for partition of immoveable property governed by Art 144 and not 120.* Where a Mahomedan sues for partition of moveables and immoveables, his claim as regards immoveables falls within Art 144 and not 120 of Sch. II of the Limitation Act. SYED NOORDEEN SAHIB *v.* SYED IBRAHIM SAHIB (1910)
I. L. R. 34 Mad. 74

——— **Arts. 132, 144**—*Mortgage—Third person redeeming the mortgage at mortgagor's desire—Sale by mortgagor of his rights—Sale-deed unregistered—Sale-deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's rights—Adverse possession by lienor—Registration Act (III of 1877), s. 17—Evidence Act (I of 1872), s. 91.* The plaintiff mortgaged certain property with possession with defendant No. 1 for ₹601 on the 4th April 1873. On the 25th November 1878, defendants Nos. 2 to 4, at the request of the plaintiff, paid off the mortgage to defendant No. 1; and for the sum so paid and for a further payment of ₹50, the plaintiff sold the property to defendants Nos. 2 to 4. The document as to the sale was not registered; but ever since the purchase, the defendants Nos. 2 to 4 were in possession as owners. In 1907, the plaintiff filed a suit to redeem the mortgage of 1873. The defendants

LIMITATION ACT (XV OF 1877)—*contd.*

——— **Sch. II, Art. 132, 144**—*concld.*

Nos. 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation:—*Held*, that the sale deed being unregistered could not be looked at for proving the sale, but it could be looked at as evidence of payment of money. *Mahadnappa bin Danappa* v. *Dari bin Bala, (1875) P. J. 299* and *Waman Ramchandra* v *Dhondiba Krishnaji, I L. R 4 Bom. 126*, followed. *Held*, further, that the redemption having been made by the defendants for the plaintiff with his knowledge and consent, they became entitled to hold the property as lienors and the plaintiff could not recover it from them without paying the amount of ₹651. *Mahomed Shumsool* v. *Shewukram, L R 2 I. A. 17*, followed. *Held*, further, that the defendant's lien was alive for twelve years after 1878, that is, up to the year 1890 (Art. 132 of the Limitation Act of 1877); that when that period expired, the lien was gone and their possession after that was without any right, and that their title by adverse possession was perfected in 1902. *Ramchandra Yeshvant Sirpotdar* v. *Sadashiv Abaji Sirpotdar, I. L. R. 11 Bom. 422*, explained. *Held*, therefore, that the plaintiff's suit was barred by limitation. SAMBHU BIN HANMANTA *v.* NAMA BIN NARAYAN (1911)
I. L. R. 35 Bom. 438

——— **Sch II, Art. 134**—

See HINDU LAW—ENDOWMENT.
I. L. R. 38 Calc. 526

——— **Sch. II, Art. 141**—*Hindu law—Suit by reversioner for possession—Adverse possession by widow of predeceased son of last male owner—Limitation.* A separated Hindu died leaving him surviving two widows and a daughter-in-law, the widow of his predeceased son. Upon the death of the survivor of the two widows the daughter-in-law took possession of the property and remained in possession thereof for more than twelve years, adversely to the reversioners. *Held*, on suit by the reversioners to recover possession, that their claim was time-barred, their cause of action having commenced from the death of the survivor of the two widows of the last owner *Sham Koer* v. *Dab Koer, L. R. 29 I. A. 132*, referred to. GAJADHAR PANDE *v.* PARBATI (1910) . . **I. L. R. 33 All. 312**

——— **Sch. II, Arts. 137, 142, 144**—*Adverse possession*—"*Defendant*"—*Successive but independent trespassers.* Plaintiffs purchased certain property at an execution sale on the 20th November 1891, the property being at the time of purchase in the possession of trespassers, and formal possession was given to them on the 25th November 1892. In 1897 other persons, also trespassers, obtained possession of the property, against and not through the persons originally in possession. In 1908 the plaintiffs sued the second set of trespassers for possession. *Held*, that Art. 144 of the second Schedule to the Indian Limitation Act, 1877, applied and the suit was not time-barred. *Ram Prasad Janna* v. *Lakhi Narain*

LIMITATION ACT (XV OF 1877)—*contd*

——— Sch II, Arts. 137, 144—*concld.*

Pradhan, I. L R. 12 Calc 197, followed. RAM LAKHAN RAI *v* GAJADHAR RAI (1910)
I. L R. 33 All. 224

——— Arts. 142 and 144—*Suit to recover possession—Dispossession—Discontinuance of possession—Possession as an agent of minors—Decree by the minors on attaining majority against the agent for possession of the property—Decree not executed and barred by limitation—Agent wrongfully dispossessed by a third person—Money decree against the original owners—Decree-holder seeking to attach property—Adverse possession—Civil Procedure Code (Act XIV of 1882), s 283* *N* died in 1879 leaving behind him two minor sons *R* and *D*, and a mistress *A* The later looked after the minors and managed their property When they arrived at the age of majority they found that *A* claimed the property in her own right In 1891, *R* and *D* sued *A* for the possession of the lands and obtained a decree on the 30th of August 1892, which was confirmed on appeal on the 15th June 1894 This decree was sought to be executed on the 26th June 1897, but the application was dismissed as barred by limitation. *A* was then wrongfully deprived of the possession of the property by *V*, who sold it to *B* in 1898 *B* mortgaged the property to *E* in 1900. In the same year the plaintiff obtained a money decree against *R* and *D*, and in execution of it he had an attachment placed on the property, but the attachment was removed in 1904 at the instance of *B* and *E* In 1905, the plaintiff brought a suit for a declaration that the property was liable to be attached and sold in execution of his decree against *R* and *D* The defendants *B* and *E* contended that the suit was barred under Art. 142 of the Limitation Act, 1877, inasmuch as neither the plaintiff nor his predecessors-in-title *R* and *D* were in possession of the property within twelve years preceding the suit *Held*, that the suit having been brought by the plaintiff, under s 283 of the Civil Procedure Code of 1882, to establish his right to attach and sell the property in dispute as that of his judgment-debtors *R* and *D* in execution of his money decree, all that he had to prove was that on the date of attachment the judgment-debtors had a subsisting right to the property; and that the suit must, therefore, be tried as if it were a suit for possession by the judgment-debtor. *Held*, also, that as *A*'s possession must be deemed to have begun in 1879 as that of bailiff or agent for the minors *R* and *D* and to have continued as such until after they had arrived at the age of majority, and as there had never been any dispossession by *A* of *R* and *D* while they had been in possession, in a suit against *A* her plea of limitation would be decided by the application, not of Art. 142, but of Art. 144 of the Limitation Act, 1877. *Morgan* v *Morgan, 1 Atk. 489,* followed; *Taylor* v. *Horde, Sm. L. C. Vol. II (10th Edn.), 644, 645,* followed; *Lallubhai Bapubhai* v. *Mankuvarbai, I. L. R. 2 Bom. 388, at p. 413,* followed; and *Dadoba* v. *Krishna, I. L. R. 7 Bom. 34,* followed. *Held*, further, that though the decree for possession, obtained by *R* and *D* against *A* had become incapable of execution by reason of their failure to apply to the Court for its execution within the period prescribed by the law of limitation, the right established by it remained and though that right could not be enforced as against *A* by execution through the Court, the decree-holders could enter by ousting any trespasser, *A* included. *Bandu* v. *Naba, I L R 15 Bom 238,* followed. *Held*, therefore, that there having been no allegation of possession in *R* and *D* lost by dispossession or discontinuance of possession, but the case put forward having been a title in them established by their decree against *A* and a wrongful possession obtained from her after the decree by *V* under whom *B* and *E* claimed, the limitation applicable to the suit was that provided by Art 144, not Art. 142, of the Indian Limitation Act (XV of 1877) *Fakir Abdulla* v *Babaji Gungaji, I. L R. 14 Bom 458,* followed, and *Gangaayal Nagu Kaval Mhatra* v *Nago Dhaya Mhatra, (1887) P J. 242,* followed *Per* HEATON, *J* .—Art. 142 of the Indian Limitation Act (XV of 1877) has no application to claims which neither in form nor in terms are claims to possession, made necessary by reason of dispossession or discontinuance of possession. It is a general principle that anyone suing in ejectment must prove possession within twelve years: the reason for this, however, is that possession is commonly the effective assertion of title which is relied on; but it is not the only one. There is another which in some cases is equally good, and that is an assertion of title made in Court and established by a decree. That is good against those who are party defendants to the suit; and if the same title is reasserted and made good in a later suit against other opposing parties, it is good against them also and entitles to possession whether the title claimant has or has not been in possession within twelve years, unless the opponent can defeat the title by adverse possession VASUDEO ATMARAM JOSHI *v.* EKNATH BALKRISHNA THITE (1910)
I. L. R. 35 Bom 79

LIMITATION ACT (XV OF 1877)—*concld.*

——— Sch. II, Arts. 142, 144—*concld*

——— Sch. II, Art. 144—

See HINDU LAW. I. L. R. 34 Mad. 402

——— Sch. II, Art. 164—

See SUBSTITUTED SERVICE.
I. L. R. 38 Calc. 394

——— Sch. II, Art. 179—

See LIMITATION . I. L. R. 33 All. 264

——— ——— ——— *Limitation—Step in aid of execution, withdrawal of informal application, if is—Civil Procedure Code (Act XIV of 1882), ss 232 235—Retransfer of assigned decree to decree-holder.* Where a decree-holder applied for execution of a decree and withdrew the application on the objection of the judgment-debtors that the decree had been transferred to a third person who had retransferred it to the decree-holder and that

LIMITATION ACT (XV OF 1877)—*concld*

——— Sch. II Art 179—*concld.*

therefore the execution could not proceed —*Held*, that the application was a step in aid of execution and saved limitation *Gopal Sah* v *Janaki Koer*, *I L R 23 Calc 217*, distinguished. MUSARAF ALI *v* AMIR JAN BIBEE (1910) . . **15 C. W. N. 71**

——— Sch. II, Art. 180—*Execution of decree—Limitation—Terminus a quo—Order of His Majesty in Council dismissing an appeal for want of prosecution an affirmance of the decree appealed from* An order of His Majesty in the Privy Council dismissing an appeal for whatever cause is in effect an affirmance of the Court below and is the only order in the litigation capable of enforcement Where, therefore, an appeal to His Majesty in Council from a decree passed by the High Court for sale on a mortgage was dismissed for want of prosecution, it was *held* that limitation in respect of an application by the decree-holder for an order absolute for sale was governed by Art 180 of the second Schedule to the Indian Limitation Act, 1877, time running from the date of the order of His Majesty in Council *Pitts* v *LaFontaine*, *L. R 6 A C 482*, *Luchmun Persad Singh* v. *Kishun Persad Singh*, *I. L R 8 Calc 218*, *Beni Rai* v *Ram Lakhan Rai*, *I L R 20 All. 367*, *Tassaduq Rasul Khan v Kashi Ram*, *I. L. R. 25 All 109*, and *Oudh Behari Lal* v *Nugeshar Lal*, *I. L. R 13 All 278*, referred to *Bipro Doss Gossain* v. *Chunder Seekur Bhuttacharyee*, *7 W. R 521*, distinguished ABDUL MAJID *v.* JAWAHIR LAL (1910) . . **I. L. R 33 All. 154**

LIMITATION ACT (IX OF 1908).

——— s. 3—*Limitation—Amendment of plaint after expiry of limitation—Zamindari property—Incorrect statement of extent of share claimed* In a suit for pre-emption under the Muhammadan law of a zamindari share it was found that the necessary conditions of the Muhammadan law had been fulfilled, but, there being some doubt as to the exact share sold, the plaintiff had specified it in his plaint as 15 biswansis, when in fact it amounted to 17 biswansis. *Held*, that, it was within the competence of the Court to allow the plaintiff to amend his plaint so as to claim the larger share, even after the period of limitation for the suit had expired MUHAMMAD SADIQ *v.* ABDUL MAJID (1911) **I L. R 33 All. 616**

——— s. 3, Art 177 —

See APPEAL, ABATEMENT OF. **I. L R. 34 Mad. 292**

——— s. 6—

See GENERAL CLAUSES ACT, s. 6, CL. (c) **15 C. W. N. 845**

——— ss. 12, 29—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 46 (4) **I. L R. 33 All. 738**

——— s. 18—

See SALE . . **15 C. W. N. 965**

LIMITATION ACT (IX OF 1908)—*concld.*

——— s. 19—*Debt entered in schedule filed by Insolvent—Acknowledgment—Limitation* Where an insolvent has written down a debt in his schedule, as owing that debt to a named person, and has signed the schedule, that is a sufficient acknowledgment, under s 19 of the Indian Limitation Act (IX of 1908), to extend the period of limitation. CHOBEY SHRIGOPAL CHIRANJILAL *v* DHANALAL GHASIRAM (1910) . **I. L R. 35 Bom. 383**

——— Sch. I, Arts. 4, 115, 126—

See PARTNERSHIP . **15 C. W. N 882**

——— Sch. I, Arts. 62, 120, 132—

See TRANSFER OF PROPERTY ACT, SS 82, 100 . . **I. L R. 33 All. 708**

——— Sch. I, Art. 64—

See SUBSTITUTED SERVICE **I. L. R. 38 Calc. 394**

——— Sch. I, Art. 134—

See HINDU LAW—ENDOWMENT **I. L R. 38 Calc. 526**

——— Sch. I, Art 138—

See CIVIL PROCEDURE CODE, 1908, S. 47. **I. L. R. 35 Bom 452**

——— Sch. I, Art. 164—*Limitation Act (XV of 1877), s. 14 and Sch II, Art. 164, and (IX of 1908), s. 14 and Sch I, Art 164, applicability of—Application to set aside ex parte decree passed before Amending Act—Provincial Small Cause Courts Act (XV of 1882), s 17—Deposit of security after application—Power of Court to extend time—Fraud, knowledge of, onus of proof as to Semble* Where an application to set aside an *ex parte* decree is made after the Limitation Act of 1908 came into operation although the decree was passed before it came into force, the provisions of the Act of 1908 and not those of the Act of 1877 would apply An *ex parte* decree was obtained in a Small Cause Court on the 7th August 1908 and on the 14th December 1908 a fraudulent entry was obtained in the records of the Court that the decree had been partially executed by attachment of moveables On the 26th February 1909 the judgment-debtor first became aware of the existence of an *ex parte* decree against him On the 15th March he applied before another Court to have the *ex parte* decree set aside Subsequently the application was returned for presentation to the Court which passed the decree On the application being refiled in that Court it was registered as an ordinary application to set aside an *ex parte* money decree On the 7th August 1909 it was discovered that the decree was a Small Cause Court decree and an order was made giving the petitioner time to deposit the amount of the decree under s 17 of the Provincial Small Cause Courts Act The time having subsequently being extended, the amount was ultimately deposited on the 28th August 1908: *Held*, that in the circumstances whether the Limitation Act of 1877 or that of 1908 applied, the application was not liable to be

LIMITATION ACT (IX OF 1908)—*concld.*

——— **Sch. I, Art. 164**—*concld.*

rejected as time-barred as under s. 14 of the Limitation Act the judgment-debtor would be entitled to a deduction of time from the 15th March to the 7th August when he was prosecuting another legal proceeding in good faith; also, in the circumstances, he must be deemed to have first become aware of the decree as a decree of the Small Cause Court on the 7th August 1909. That regarding the application as having been filed on the 7th August 1909, no question as to the deposit being made out of time as prescribed by s. 17 of the Provincial Small Cause Courts Act arises The provisions of s 17 of the Provincial Small Cause Courts Act are mandatory where an application under that section is filed without security; but where the security is deposited within the time allowed by law for the application, the applicant has a right to have his application heard on the merits. Where an application is made by a party on the allegation that an entry in a judicial record is fraudulent, there is nothing to prevent the application being entertained without a preliminary enquiry into the truth of the allegation. *Bhobunessary* v. *Judobendra Narain Mullick, I. L R. 9 Calc 869*, distinguished and doubted. Where a fraud has been committed by a person who has obtained property thereby, the party defrauding can resist the application of the injured party on the ground of limitation, only if he can show that the injured complainant had clear and definite knowledge of the facts constituting the fraud at a time too remote for the suit to be brought and the mere suggestion of being defrauded is not sufficient for the purpose. *Rahimbhoy* v *Turner, I. L. R 17 Bom 341*, followed BASIRUDDIN MANDAL *v.* SONAULLA MANDAL (1910) . **15 C. W. N. 102**

——— **Sch. I, Art. 171**—

See CIVIL PROCEDURE CODE, 1908, O. I, R. 10 . . **I. L R. 35 Bom. 393**

——— **Sch. I, Arts. 181-183**—

See MORTGAGE . **I. L. R. 38 Calc. 913**

LIS PENDENS.

See TRANSFER OF PROPERTY ACT, S. 52 **15 C. W. N. 261**

LOCAL INVESTIGATION.

——— *Irregularity whether vitiates trial.* Where in the course of a trial, the Court sent out a Sub-Deputy Magistrate to hold a local investigation and examined him as a witness after he had made the investigation: *Held*, that the sending out of the Sub-Deputy Magistrate was at most an irregularity and unless it prejudiced the accused, the trial was not vitiated thereby. That, under the circumstances of the trial, the irregularity did not prejudice the defence. RADHA MADHAB PAIKRA *v.* EMPEROR (1910) . **15 C. W. N. 414**

LOCUSTS.

——— *Locusts, owner's right to drive away, from land—Liability to neighbouring owner on whose land they alight, for injury done.* Visitations of locusts, even where unpleasantly frequent, are in the nature of extraordinary and incalculable events, rather than a normal incident like the rise of a river in a rainy season The principles of law laid down preserving or regulating the settled course of a river, on which depend many of the rights and benefits of adjacent owners, are not necessarily appropriate to the course of an insect pest, which has no settled course and which it is the interest of every one concerned to repel or destroy. An owner may therefore protect his land from such a visitation and turn away the pest without being responsible for the consequences to neighbouring owners. Even if such visitations be regarded as a normal incident of agricultural industry, the owner would be entitled as an agricultural operation to drive away the swarm, just as he would be entitled to scare crows without regard to the direction they may take in leaving. GREYVENSTEYN *v.* HATTINGH (1911) . . **15 C. W. N. 569**

LOCUSTS—*concld.*

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MADRAS ACTS.

——— **1863—X**

See MADRAS RELIGIOUS ENDOWMENTS ACT.

——— **1864—II.**

See MADRAS REVENUE RECOVERY ACT.

——— **1865—VII.**

See MADRAS IRRIGATION CESS ACT.

——— **VIII.**

See MADRAS RENT RECOVERY ACT.

——— **1882—V.**

See MADRAS FOREST ACT.

——— **1884—V.**

See MADRAS LOCAL BOARDS ACT.

——— **1895—III.**

See MADRAS HEREDITARY VILLAGE OFFICERS ACT.

——— **1897—IV.**

See MADRAS SURVEY AND BOUNDARIES ACT.

——— **1900—I.**

See MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MADRAS).

——— **1904—III.**

See MADRAS CITY MUNICIPAL ACT.

MADRAS CITY MUNICIPAL ACT (III OF 1904).

———— ss 121, 125, 172 and 177—*Right of appeal—Scope of section, assessment, finality of order of, when no objection made within 15 days.* Petitioner's name appeared in the classification made under s 121, Madras City Municipal Act of 1904, and he was served with a notice to pay profession tax under s. 125 of the Act. He did not pay the tax nor did he apply for revision within fifteen days of the notice :—*Held*, that under s. 177 the assessment was final and that no appeal lay. Profession tax is a matter within the scope of s. 172 The first clause of s. 172 of the Act of 1904 is wider than the corresponding clause of s. 190 of Act I of 1884. S 172 of the Act of 1904 must be construed to mean that all complaints against any tax or toll leviable under Part IV and all applications for revision in respect of any such tax or toll are cognisable by the President and two Commissioners It should not be read so as to limit the complaints and the applications for revision as to the question of classification. *Muthusawmy Ayyar, J*, *in Davies* v. *President of the Madras Municipal Commission, I. L. R. 14 Mad. 140, 144*, not followed. *Municipal Council of Cocanada* v. *The Standard Life Assurance Company, I. L R. 24 Mad 205*, distinguished. VEERARAGHAVELU *v.* THE PRESIDENT OF THE CORPORATION OF MADRAS (1910) **I. L. R. 34 Mad. 130**

MADRAS CIVIL COURTS ACT.

———— s. 16—

See LIMITATION ACT, 1877, SCH II, ART 35 . . **I. L. R. 34 Mad. 398**

MADRAS FOREST ACT (V OF 1882).

———— ss 3, 16, 25—

See POSSESSION, NATURE OF. **I. L. R. 34 Mad. 353**

MADRAS IRRIGATION CESS ACT (VII OF 1865).

1. ———— *Inam lands irrigated by water coming from Government source—Water-cess liable to be levied on, where inamdar has no option to refuse use—Phrase "used for the purpose of irrigation," meaning of* Certain dry inam lands were submerged by water flowing from a Government source and by reason thereof the inamdar was compelled to raise wet crops with the help of the water which he enclosed in his adjoining land out of the flood water : *Held*, that under Madras Act VII of 1865, he was liable to pay water-cess. Madras Act VII of 1865 is not based upon any theory of the ownership of the bed of a tank or water course being the foundation of a right to use the water free of charge. The fact that before irrigating the inamdar's lands the water had flowed through two-fifths of a sheet of water included in the inam does not make it any the less water from a Government source. *Held*, further, the fact that rain water had got mixed with the flood water is no ground for getting rid of the liability. *Secretary of State for India in Council* v. *Perumal Pillai, I. L. R. 24 Mad. 279*, distinguished. *Maria Susai Mudali* v. *The Secretary of State for India, 14 Mad. L. J. 350*, distinguished. SECRETARY OF STATE FOR INDIA *v.* SWAMI NARATHEESWARAN (1910) . **I. L. R 34 Mad. 21**

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

2. ———— *Madras Act II, 1864—'Defaulter,' who is—Person liable to pay cess under Act VII of 1865—The zamindar and not the tenant in occupation liable.* Where water-cess is leviable on zamindari land under the provisions of Madras Act VII of 1865, the person bound to pay such cess is the zamindar and not the tenant in occupation of such land. *Nynappan Servai* v. *Secretary of State, Mad. W. N. 322*, dissented from. *Subramanya Chetty* v. *Mahalingasami Sivan, I L. R. 33 Mad. 41*, followed. The zamindar is the proprietor and land-holder within the meaning of Act II of 1864. He is the defaulter whose right and interest passes by the sale under s. 39 of the Act. The security for the public revenue and for the cess which is recoverable as such revenue is the full proprietary right and not the right of the tenant. KOTTILINGA SETTU ROYER, ZAMINDAR OF URKAD *v.* SAHASRANAMA IYER (1911) **I. L. R. 34 Mad. 520**

1. ———— s. 2—*Ownership of bed of channel—Owner of channel bed not on that account alone entitled to water free of cess—Engagement to supply water free of charge, how proved—Nature of engagement to be inferred from permanent settlement—Act III of 1905, s. 2—Stream, what is—Voluntary payment—Money paid on a decree and under Act II of 1864 not voluntary.* Where in a grant by Government of land, no reservation is made of channel beds and nothing is proved to show that the Government must have intended to reserve them and it is shown that the grantee exercised full control over the channel, it must be presumed that the bed of the channel was included in the grant The ownership of the bed will not, however, carry with it the right to use the water of the channel free of charge under Act VII of 1865. If water from a Government channel or river is distributed through channels provided by a private person, such irrigation is not free of cess. S. 2 of Act III of 1905 is declaratory ; and effect must be given to the clear declaration, without confining its operation to the matter of encroachments on land. The channel or river is the flowing body of water Under s. 2 of Act III of 1905 where it is not shown to belong to a private person, it belongs to Government although private persons may be proprietors of the bed. The riparian proprietors have easement rights, but they are not on that account owners of the channel ; and they cannot use water which belongs to Government free of cess in the absence of an engagement with Government to that effect. The abstention of Government from charging water cess for a number

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*contd.*

——— s. 2—*contd.*

of years, and the fact that the Government and the zamindar apportioned the cost of the upkeep of the channel according to the extent of zamindari and ryotwari land under it, do not raise a presumption of any such engagement. The only engagement which can be inferred from the Permanent Settlement is that the peshkush being fixed with reference to the area of land then under irrigation no further charge for the use of water should be made in respect of that area. The burden of proving that any kind of crop is exempt from water cess lies on the zamindar: *Maria Susai Mudaliyar* v *The Secretary of State for India in Council, 14 Mad. L. J 354.* Where capacity to grow a second crop is taken into account in fixing the peshkush, no separate charge can be made for the second crop Money paid on a demand by Government and enforceable by attachment under Act II of 1864 is not a voluntary payment KANDUKURI MAHALAKSHMAMMA GARU v SECRETARY OF STATE FOR INDIA (1910)

I. L. R 34 Mad. 295

2. ——— ——— *Conditions necessary to entitle Government to levy water cess—Government irrigation source, what is—Engagement, nature of, to be implied from title deed—Extent of water right, how ascertained—Cultivation of larger area without increase of water not liable to cess—Injunction, granting of.* The essential conditions for the levy of water cess under Madras Act VII of 1865 are —(i) The irrigation must be effected by means of the water of 'a river, stream, tank or channel or work belonging to or constructed by Government.' (ii) If the water from such a source is received by indirect flow or used after storage in an intermediate reservoir, the irrigation must, in the opinion of the Collector (subject to the control of the Board of Revenue and Government) be beneficial to and sufficient for the requirement of the crops. (iii) The charge must not be contrary to any engagement between the landholder and Government whereby the latter is entitled to irrigation free of charge Where water from two hills—one belonging to Government and the other to a private party—combine and flow in a channel between Government and private lands and through Government and private lands alternatively and is afterwards drawn for irrigation through channels owned by private parties, such irrigation is effected by means of water drawn from a Government source within the meaning of s 2 of Act VII of 1865 *Uralam Proprietrix* v *The Secretary of State for India, I L R. 34 Mad. 295*, followed Where Government waters mingle with those of another stream, the combined water must be treated as Government water and the fact that it is drawn for use through private channels is immaterial. The question whether the irrigation is beneficial and sufficient must be decided by the Collector and his decision, when not impeached by the Board of Revenue or Government, cannot be questioned by the Civil Courts.

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*concld.*

——— s. 2—*concld.*

The only undertaking which may be implied from a grant of land by Government is an undertaking to supply water free of charge to the extent of the accustomed flow at the time of the grant. Where the quantity of the customary flow cannot be ascertained, the area irrigated will be presumed to be the measure of the quantity of water used at the time of the grant. Where a larger area is irrigated subsequent to the grant, it will be open to the landholder to show that the increase is not due to the use of a larger quantity of water but to a more economical use of it, in which case no cess can be levied for the increased extent *Maria Susai Mudaliar* v *The Secretary of State for India, 14 Mad. L J. 354*, referred to An injunction ought not to be granted when there are no sufficient data for determining whether an infringement of it has taken place. SECRETARY OF STATE FOR INDIA *v.* AMBALAVANA PANDARA SANNADHI (1910)

I. L. R. 34 Mad. 366

MADRAS LOCAL BOARDS ACT (V OF 1884).

——— s. 51

See CHARITABLE TRUST.

I. L. R. 34 Mad 375

——— *Taluk Board taking over management of charity not bound to keep account accessible to all persons, when they take the place of trustees who are under an obligation to do so—Power of Taluk Board to transfer management—Madras Regulation VII of 1817, ss 2, 3, 5, 7. 8, 13—Under s. 51 of Act V of 1884, the Taluk Board is vested with powers of supervision and management and not with the power of appointing trustees conferred on the Board of Revenue.* Where a Taluk Board under s. 51 of Madras Act V of 1884 takes the place of trustees appointed by a will, which directs the trustees to keep accounts accessible to all persons, such Board will not in the absence of a charge of mismanagement be under an obligation to keep such accounts The management being transferred by a special law to a statutory body, we must look to that law and not to the will to determine the duties incidental to such management. The Board is not bound to give inspection of accounts when no charge of mismanagement is made. The Taluk Board which has taken over the management under s. 51 of the Act cannot appoint an independent trustee so as to divest itself of the duty of management. The power and duties of the Board of Revenue which devolve on the Taluk Board under s 51 of the Act do not include the power to appoint trustee vested in the Board under s. 13 of Reg VII of 1817. NELAYATHAKSHI AMMAL *v.* THE TALUK BOARD, MAYAVARAM (1910) . **I. L. R. 34 Mad. 333**

MADRAS RELIGIOUS ENDOWMENTS ACT (X OF 1863).

See CHARITABLE TRUST.

I. L. R. 34 Mad. 375

MADRAS RENT RECOVERY ACT (VIII OF 1865).

——— *Tenant, who is—Transfer puts an end to holding without notice to landlord—Tenant at the beginning of fasli is tenant for the fasli, notwithstanding subsequent transfer* A transfer of the holding by the tenant puts an end to the tenancy without notice to the landlord, unless the tenant under certain circumstances is estopped from denying its continuance. There is nothing in the Rent Recovery Act to warrant a contrary view. A tenant who is a tenant at the beginning of the fasli continues to be the tenant for the fasli, notwithstanding a subsequent transfer of the holding, and is liable to be proceeded against under the Rent Recovery Act. RAMASAWMI AYYANGAR *v.* SHUNMUGAN PILLAI (1910)
I L R. 34 Mad. 179

MADRAS REVENUE RECOVERY ACT (II OF 1864).

——— ss. 2, 5, 42—*Provisions of s. 42 not confined to land on which the arrears become due—Land mortgaged by defaulter does not cease to be his property* Land belonging to the defaulter does not, because mortgaged by him, cease to be his property within the meaning of s 5 of Act II of 1864 There is nothing in s. 2 or 5 to restrict the land that may be sold thereunder to the land in which the arrears of revenue have accrued. When therefore land belonging to the defaulter is sold for arrears accruing due on their lands belonging to him, the sale under s 42 of the Act is free of all encumbrances. SECRETARY OF STATE FOR INDIA *v* PISIPATI SUNKARAYYA (1910) . . . **I. L. R. 34 Mad. 493**

MAGISTRATE.

See CRIMINAL PROCEDURE CODE, s 520
I. L. R. 35 Bom. 253

See JURISDICTION OF CRIMINAL COURT.

——— —— duty of, to compel attendance of witnesses—

See DISPUTE CONCERNING LAND.
I. L. R. 38 Calc. 24

——— inquiry by—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S 209.
I. L. R. 35 Bom. 163

MAGISTRATE IN INSOLVENCY.

——— jurisdiction of—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 17, 103 AND 104
I. L. R. 35 Bom. 63

MAHARKI VATAN LAND

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), SS. 10 AND 13.
I. L. R. 35 Bom. 146

MAHOMEDAN LAW.

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See CIVIL PROCEDURE CODE, 1882. S 325A . **I. L. R. 33 All. 233**

See MARRIAGE . **I. L R. 33 All 90**

See PROBATE . **15 C. W N. 185**

MAHOMEDAN LAW—ADOPTION.

——— *Adoption by a convert from Hinduism—Custom of adoption—Burden of proof.* The Mahomedan Law does not recognize adoption Hence, where a Hindu is converted to Mahomedanism, the presumption is that as a necessary consequence of conversion the law of adoption recognized by Hindu Law has been abandoned by him. He who alleges that the usage and law in question had been retained must prove it BAI MACHHBAI *v.* BAI HIRBAI (1911)
I L R. 35 Bom. 264

MAHOMEDAN LAW—ALIENATION.

——— ——— *Minor—Right to sell minor's property—Necessity—Bonâ fide purchaser without notice* By a deed of conveyance dated 19th January 1904 one *N* purported to convey on behalf of herself and her minor son, the plaintiff, certain immoveable property to the defendant for the consideration of R7,000. On the same day *N* passed an indemnity bond in favour of the defendant indemnifying him against the claim of the plaintiff. The plaintiff sued to have the said deed of conveyance declared void and for a declaration that the plaintiff was entitled to the whole of the property purported to be conveyed. *Held*, that the plaintiff was entitled to succeed on the grounds (i) there was absolutely no evidence that the sale was in any way necessary for the maintenance of the minor; (ii) the purchaser was not a *bonâ fide* purchaser without notice of the plaintiff's rights. The purchaser of an estate who takes with notice of a breach of trust is in the same position as the vendor who committed the breach of trust. FAKIRUDDIN *v* ABDUL HUSSEIN (1910)
I L. R. 35 Bom. 217

MAHOMEDAN LAW—CONVERSION.

——— ——— *Marriage—Conversion of wife to Christianity—Dissolution of marriage—Suit for restitution of conjugal rights* Under the

MAHOMEDAN LAW—CONVERSION—*concld.*

Mahomedan Law a wife's conversion from Islam to Christianity effects a complete dissolution of marriage with her Mahomedan husband. The fact of such a conversion is therefore a bar to a suit by the husband for restitution of conjugal rights. *Zuburdust Khan* v. *His wife, 2 N-W P H. C. Rep. 370*, and *Imamdin* v. *Hasan Bibi, Punj Rec. (1906) 309*, followed. AMIN BEG *v.* SAMAN (1910) **I. L. R 33 All. 90**

MAHOMEDAN LAW—DOWER.

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS 2 AND 4. **I. L. R. 33 All. 327**

1. ——— **Prompt dower**—*Payment of—Restitution of conjugal rights—Consummation of marriage—Suit for prompt dower not premature before consummation* Under Mahomedan Law, the Court may hold that the whole of the dower is exigible, in cases where no specific amounts of the dower has been declared exigible and there has been no evidence of what is customary. *Fatma* v. *Sadrudin, 2 Bom. H. C R 291*, followed Prompt dower (*i.e*, *muajjal*), is payable immediately on the marriage taking place, and it must be paid on demand It is only by payment of the prompt dower that the husband is entitled to consummate the marriage or enforce his conjugal rights. Therefore the right to restitution, so far from being a condition precedent to the prompt dower, arise only after the dower has been paid. *Ranee Khejoorunissa* v. *Ranee Ryeesunissa, 13 W. R. 371*, followed HUSSEINKHAN SARDARKHAN *v.* GULAB KHATUM (1911) . **I. L. R. 35 Bom. 386**

2. ——— **Liability of widow in possession to account for profits**—*Dower—Interest. Held*, by the Full Bench, that a Mahomedan widow who has been put in possession by her husband, of his estate in lieu of her dower debt, is entitled, when called upon by her husband's heirs other than herself, to account for rents and profits received by her during the time of her possession, to claim interest at a reasonable rate upon her dower debt. The liability of the heirs of the husband not being personal, the heir who sues the widow for possession of his share is only liable to pay the proportionate part of the dower debt. *Abdul Karim* v. *Maqbulan, I. L. R 30 All. 315, Soorma Khatoon* v. *Attaff-oon-nisa Khatoon, 2 Hay 210, Woomatool Fatima Begum* v. *Meer-un-nissa Khanum, 9 W. R. 318, Bakreedun* v. *Ammatul Fatima, 3 C. L. R. 541, Mia Jan v. Bibijan, 5 B. L. R. 500*, and *Chaudhri Wasi Ahmad* v. *Musammat Maina Bibi, F. A. No. 65 of 1904*, decided 3rd July 1906, referred to. HAMIRA BIBI *v.* ZUBAIDA BIBI (1910) . . . **I. L. R. 33 All. 182**

3. ——— **Presumption**—*Sunnis—Dower—No determination at marriage whether dower is to be prompt or deferred—Civil Procedure Code, 1908, O. 11, r. 2—Estoppel.* In the case of Mahomedans of the Sunni persuasion, where it is not settled at the time of the marriage whether the wife's dower is to be prompt or deferred, part will be prompt and part deferred, the proportion referable to each category being regulated by custom, or, in the absence of custom, by the status of the parties and the amount of the dower settled. *Eidan* v *Mazhar Husain, I. L. R. 1 All. 483*, and *Taufik-un-nissa* v. *Ghulam Kamba, I. L. R 1 All 506*, followed A suit, therefore, brought by the wife during the lifetime of her husband for the recovery of the prompt portion of her dower will be no bar to a subsequent suit for the recovery of the deferred portion. UMDA BEGAM *v.* MUHAMMADI BEGAM (1910) **I. L. R. 33 All. 291**

MAHOMEDAN LAW—DOWER—*contd.*

4. ——— **Agreement between husband and wife as to satisfaction of wife's dower**—*Construction of document—Mortgage—"Mahabat"* A Mahomedan made over to his wife, to whom a dower of R1,25,000 was due, certain property In the deed of transfer it was stipulated (i) that the wife was to take possession of the property in lieu of her dower and enjoy the usufruct, (ii) that the property was to revert to the husband if the wife predeceased him, the dower debt being deemed to have been discharged; (iii) that if the husband predeceased the wife the property was to become hers absolutely. *Held*, that the transaction was neither a mortgage by conditional sale nor a *mahabat*, but the wife obtained a right to enjoy the usufruct during her husband's lifetime, with the possibility of the interest developing into full ownership if the husband predeceased her. MUBARAK-UN-NISSA *v.* MANSAB HASAN KHAN (1911) . . **I. L. R. 33 All. 421**

5. ——— ——— **Compromise**—*Suit for dower—Family arrangement—Transfer of expectancy—Transfer of Property Act (IV of 1882), s. 6 (a).* A Mahomedan wife brought a suit for dower against her husband which resulted in a compromise, the terms being that the wife was given possession of some property in lieu of her dower and the husband retained possession of some other property for life, which life interest in case of urgent necessary he was authorized to sell or hypothecate, and it was agreed that on the death of the wife the persons who should be the heirs of both would be the owners of the properties. The wife predeceased her husband who then transferred certain properties in his own right and as heir of his wife *held* that the compromise was in the nature of a family settlement under which the husband was not competent to dispose of more than the life interest in certain property therein named. The relinquishment by the husband of his right to succeed as heir to his wife was not obnoxious to the prohibition contained in s 6 (*a*) of the Transfer of Property Act, 1882. *Musammat Hurmat-ul-nissa Begam* v *Allahdia Khan, 17 W. R. 108; Shums-ud-din Ghulam Husein* v. *Abdul Husain Kalim-ud-din, I. L. R 31 Bom. 165; Kunhi Mamod* v. *Kunhi Moidin, I L. R 19 Mad. 176*, and *Ram Nirunjun Singh* v *Prayag Singh, I. L. R. 8 Calc. 138*, referred to. NASIR-UL-HAQ *v.* FAIYAZ UL-RAHMAN (1911) . . **I. L. R 33 All. 457**

MAHOMEDAN LAW—DOWER—*concld.*

6. ——— **Right of widow to retain husband's property until dower debt is paid off**—*Possession.* Under the Mahomedan Law when a widow is in possession of the undistributed property of her deceased husband, such possession having been obtained lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled, as against the other heirs of her husband, to retain such possession until her dower debt is paid The possession need not necessarily be possession obtained by an agreement with her husband or his heirs *Bibi Taslıman* v *Bibi Kasıman, 12 C L. J 584,* and *Amanat-un-nıssa v. Bashir-unnissa, I L. R 17 All. 77,* dissented from. SAHEBJAN BEWA *v.* ANSARUDDIN (1911)

I. L R. 38 Calc. 475

MAHOMEDAN LAW—GIFT.

See CIVL PROCEDURE CODE, 1882, S. 462 . . **I L. R. 35 Bom. 297**

1. ——— **Mushaa**—*Gift—Share in zemindari property—Gift by some co-sharers to the others —Possession, delivery of, if necessary—Gift to adult and minor jointly—Gift by mother to minor son —Delivery of possession if necessary.* Hiba-bilmushaa (gift of undivided joint property) is not void but only invalid, and possession remedies the defect. When persons own a property jointly any sharer may make a gift of his share in that property to any other sharer without the formality of a delivery of possession. There is no inherent illegality in a joint gift to an adult and a minor When the interest of the two are sufficiently specified so that there can be no apprehension of any confession or dispute, the gift is unobjectionable. Where some of the co-sharers of a zemindari property simultaneously made over their undivided share to the remaining co-sharers, the doctrine of *mushaa* did not apply In the case of a gift by a parent who is the *de facto* guardian of a minor to such minor, a formal delivery of possession is not necessary. JABEDANESSA BIBI *v* NAZIBAL ISLAM MOLLA (1910) . **15 C. W. N. 328**

2. ——— *Gift—Mushaa.* Where the defendant made a gift of a four-anna share in a kaimi raiyati holding to the plaintiff, his nephew by marriage, and admitted him to joint possession with himself, and recognised the plaintiff as being in such possession for 14 years: *Held,* that he could not be allowed to say that there had been no valid gift. The doctrine of *mushaa* is not applicable to such a case. *Ibrahim Goolam Ariff* v. *Saiboo, I. L. R 35 Calc. 1, Emnabai* v. *Hajirabai, I. L. R 13 Bom. 352, Jiwan Bakhsh* v. *Imtiaz Begam, I. L. R. 2 All 93, Muhammad Mumtaz Ahmad* v *Zubaida Jan, I. L R. 11 All 460,* referred to. ABDUL AZIZ *v.* FATEH MAHOMED HAZI (1911) . . . **I. L. R. 38 Calc. 518**

MAHOMEDAN LAW—GUARDIAN.

——— *Guardian, powers of—Agreement not to divide spes successionis, validity of—Agreement for management, effect of, on outstanding kanom interest.* *A*, a Mahomedan father, with children, some of whom were minors, executed a settlement whereby he gave *B* one of his adult children the right of managing all his properties during his, *B*'s lifetime The deed also provided that there was to be no division of *A*'s properties during the lifetime of *B*. The deed was signed by all the adult children, and by *A* on his own behalf and as guardian of his minor children. One of the properties mentioned in the deed was outstanding on kanom at the date of the deed After *A*'s death *C*, one of his adult children who had signed the deed, redeemed the kanom. *B* sued to recover possession of the property, on the ground that under the deed, he was entitled to the exclusive management thereof for his life: *Held,* that *C* was entitled to redeem the kanom and that *B* had only a right to sue for partition of the property. Although agreements between co-owners not to divide for a reasonable time are valid, such agreements are not valid when they relate to mere *spes successionis* The property outstanding on kanom at the date of the deed was then a mere *spes successionis* and the agreement was invalid in respect of such property The agreement was not binding on the minor sons of *A* Under the Mahomedan Law, the acts of a guardian will bind the ward only when urgent necessity or clear benefit to the ward are shown THOTTOLI KOTILAN ALIYUMMA *v* KUNHAMMAD (1910)

I. L R. 34 Mad. 527

MAHOMEDAN LAW—GUARDIAN—*concld*

MAHOMEDAN LAW—HUSBAND AND WIFE.

——— *Shias—Dispute between husband and wife as to wife's dower—Arbitration—Award transferring property of husband to wife—Further conveyance unnecessary* A Mahomedan husband and wife of the Shia persuasion referred a dispute relating to the wife's dower to abitrators, who, under a registered award, transferred the absolute ownership of the husband's property *in præsenti* to the wife, reserved possession of it to the husband for life with control over the income and provided that in the event of the wife predeceasing her husband, he should continue in possession for life, while in the event of the husband dying before the wife, she should be owner and the heirs of the husband could not interfere. Mutation of names followed in favour of the wife, who executed a mukhtarnama in favour of her husband for the management of the property conveyed to her under the award: *Held,* that the award was sufficient to transfer the ownership of the property covered by it *in præsenti* to the wife, and no conveyance need have been executed. *Ram Bakhsh* v *Moghlani Khanam, I. L. R 26 All 266,* followed: *Quære* Whether an award is governed by Mahomedan Law. MUHAMMAD TALIB HUSAIN *v.* INAYATI JAN (1911) . **I. L. R. 33 All. 683**

MAHOMEDAN LAW—MARRIAGE.

——— **Marriage, not performed through vakils**—*Requisites—Proposal and*

MAHOMEDAN LAW—MARRIAGE—*concld.*

acceptance In the case of a marriage amongst Mahomedan adults not performed through vakils, it is essential that words of proposal and acceptance must be uttered by the contracting parties in each other's presence and hearing and in the presence of two male or one male and two female witnesses who must be same and adult Moslems and the whole transaction must be completed at one meeting SAHABI BIBI *v.* KAMARUDDIN SARKAR (1911) **15 C W. N. 991**

MAHOMEDAN LAW—PRE-EMPTION.

——————— *Pre-emption—Shafi-i-sharik—Shafi-i-khalit—Shafi-i-jar—Effect of perfect partition.* When a mahal has been perfectly partitioned, no right of pre-emption under the Mahomedan Law subsists in favour of the owner of one of the new mahals in respect of the other new mahal or any portion of it on the ground of vicinage alone *Mahadeo Singh* v. *Mussamat Zeenut-un-nissa, 11 W R 169, Sheikh Mahomed Hossein* v. *Shaw Mohsin Ali, 6 B. L. R 41,* and *Abdul Rahim Khan* v *Kharag Singh, I L. R 15 All. 104,* referred to Nor will the fact that a village chaupal has remained undivided give the owner of either of the new mahals a right of pre-emption against the owner of the other as a *shafi-i-khalit Rahtab Singh* v. *Tahal Misser, 10 W R 314,* and *Shaikh Karim Buksh* v. *Kamr-ud-deen Ahmad, 6 N-W. P H C 377,* distinguished. *Abdul Rahim Khan* v *Kharag Singh, I. L. R. 11 All 104,* and *Lalla Puriag Dutt* v. *Shaikh Bunde Hossein. 15 W. R 225,* referred to. But a right of pre-emption as *shafi-i-sharik* may subsist in relation to villages, in large estates equally with houses, gardens and small plots of ground *Sheikh Mahomed Hossein* v *Shaw Mohsin Ali, 6 B. L. R 41,* and *Shaikh Karim Buksh* v *Kamr-ud-deen Ahmad, 6 N.-W P. H C. 377,* referred to. MUNNA LAL *v* HAJIRA JAN (1910) . . . . **I. L. R. 33 All. 28**

MAHOMEDAN LAW—WAKF.

1. ——————— Valid wakf—*Charitable object—Expenses of fatiha of executant—Burning lamps in mosque—Salary of Hafiz Held* by BANERJI, J. (STANLEY, *C J, dubitante*), that a waqf by which a substantial portion of the income of the endowed property was appropriated for (i) expenses of the annual *fatiha* of the waqif, of her husband and members of her family; (ii) the annual expenses of burning lamps in a mosque, and (iii) the salary of Hafiz and readers of the Quran, was a valid waqf, and that there was a substantial dedication of the property to religious or charitable purposes. *Mahomed Ahsanulla Chowdhri* v. *Amarchand Kundu, I. L. R 17 Calc 498, Luchmiput* v. *Amir Alum, I L R 9 Calc. 176; Phul Chand* v. *Akbar Yar Khan, I L. R. 19 All. 211,* and *Biba Jan* v. *Kalb Husain, 6 All L. J 115, I L R 31 All. 136,* referred to *Kaleloola Sahib* v *Nuseeruddeen, I. L R. 18 Mad. 201,* and *Fakhr-ud-din Shah* v. *Kifayat-ullah, 7 All. L. J. 1095,* doubted.

MAHOMEDAN LAW—WAKF—*concld.*

Per STANLEY, *C.J*—The general dedication of villages in the name of God is not sufficient to render the waqf valid in respect of so much of the property as has been dedicated expressly for specific objects which are not proper objects of waqf; *fatiha* ceremonies and the reading of the Quran in private do not seem to be such objects. MAZHAR HUSAIN KHAN *v.* ABDUL HADI KHAN (1911) **I. L. R. 33 All. 400**

2. ——————— *Performance of fateha, when a valid object of wakf—Wakf when illusory—Rule to be adopted when one of the purposes of the wakf fails—Provision for heirs invalid as a wakf—Validity of direction to accumulate in a wakf* The performance of fateha (distribution of alms to the poor accompanied with prayers for the welfare of the souls of deceased persons) which so far as it involves the expenditure of any money, consists in feeding the poor, is a valid object of wakf. A gift for the benefit of a man's own family or descendants will not be valid as a wakf; and a gift, really for such a purpose, though ostensibly one for valid charitable purposes will be bad as only an illusory wakf It can be no objection to the validity of a wakf that some provision is made for the donor's family provided such provisions are not inconsistent with the gift being one substantially for charity If, however, such provisions in a deed purporting to be by way of wakf exhausts the bulk of the income or are to last for an indefinite period, the wakf will be bad as illusory. The fact that the donor did not direct the proportions in which the income should be divided between the charities and his heirs, who were appointed trustees will not raise the presumption that he intended the heirs to take the whole It must be presumed that he intended the charities and his heirs to benefit equally Where a donor mentions several purposes as objects of charity and one of such purposes fails, then, if a general intention can be gathered of dedicating the property to charity, the entire property will be devoted to the lawful objects, if any, mentioned in the deed and in the absence of any such to the poor, whether or not any definite portion of the income has been set apart for the purpose which fails A gift by way of wakf partly for valid charitable purposes and partly for the donor's heirs will not be void because the latter is not a legal purpose of a wakf. The wakf will be valid and the whole income will be devoted for the valid purposes. A provision for accumulation which will enure solely for the benefit of charitable purposes will not be bad as offending the law of perpetuities. RAMANADHAM CHETTIER *v.* VADA LEVVAI MARAKAYAR (1910) **I L. R. 34 Mad. 12**

MAINTENANCE.

See WILL . . **15 C. W. N. 121**

——————— of daughters—

See WILL . . **I. R. 38 Calc. 327**

MAINTENANCE—*contd*

1. ———— **Illegitimate son**—*Right of offspring of illegitimate son of a married woman to maintenance from the joint family property of the survivors of the putative father—Criminal intercourse, effect of, on right to maintenance* The offspring of the intercourse of a man with his concubine who was a married woman is entitled to maintenance against the surviving members of the joint Hindu family to which the father belonged and who have taken his share by survivorship. *Cheroturya Run Murdun Syn* v *Sohul Purhulad Syn, 7 Moo. I. A 18*, followed, and *Muthusawmy Jayavera Yettuppa Narcker* v. *Vencataswara Yettaya, 12 Moo I A. 203*, followed There is no distinction between the right of the illegitimate son of a unmarried woman to maintenance out of the estate of the putative father and that of the offspring of an adulterous intercourse. *Venkatachella Chetty* v. *Parvatham, 8 Mad H C. 134, 143*, followed *Viravamuthuduyan* v *Singaravelu, I L R 1 Mad. 306*, followed. *Kuppa* v. *Singaravelu, I. L R 8 Mad 325*, followed *Rahi* v. *Govinda Valad Teja, I L R 1 Bom 97*, followed. The offspring of a criminal intercourse should not be deprived of maintenance on the ground of the criminal origin of its being. *Vedanayaga Mudaliar* v *Vedammal, I. L. R 27 Mad 951*, distinguished. SUBRAMANIA MUDALI *v.* VELU (1910)
I. L R 34 Mad 68

2. ———— **Future maintenance**—*Widow's right to transferable property—Right not one falling within s. 6, Transfer of Property Act—Validity of transaction not governed conclusively by Act, Civil Procedure Code, s 226—Contract Act (IX of 1872), s. 16—Undue influence* A right to future maintenance is not an interest in property restricted in its enjoyment to the owner personally within the meaning of paragraph (*d*) of s 6 of the Transfer of Property Act neither is it property within the enabling words of s. 6 of that Act. The fact that the transfer of such an interest is not recognised by the Transfer of Property Act is not conclusive on the question of its validity Where the amount payable is subsequently fixed by agreement or by decree a transfer of such an interest may be valid. Urgent need of money on the part of a borrower does not of itself place the lender in a position to " dominate his will " within s. 16 of the Contract Act. Nor on the other hand will the fact that the borrower acted under advice preclude her asking for relief on the ground of undue influence. Where the executant of a document was a poor widow who entered into a contract with a money-lender to enable her to establish her right to maintenance : *Held*. that under sub-s. 3 of s 10 of the Contract Act the burden is on the plaintiff to prove that the contract was not induced by undue influence. RANEE ANNAPURNI NACHIAR *v.* SWAMINATHA CHETTIAR (1910)
I. L. R. 34 Mad. 7

3. ———— **Attachment of maintenance allowance**—*Maintenance to a person for lifetime and to her descendants—Assignment of decree for maintenance—Recurring charge—Validity of assignment in respect of arrears or future maintenance—Transfer of Property Act (IV of 1882), s. 6—Civil Procedure Code (Act XIV of 1882), ss. 232, 266—Civil Procedure Code (Act V of 1908), O. XXI, r. 16* Where a person is entitled to a monthly maintenance allowance under a deed, the allowance can be attached by an execution creditor only after it has become due, that is to say, it cannot be attached prospectively before it has become due. *Kasheeshuree Debai* v *Grees Chunder Lahoree, 6 W R. Mis 64, Hari Das Acharjia* v. *Baroda Kishore Acharjia, I L. R 27 Calc. 38, Harris* v. *Brown. I. L R. 28 Calc 621*, referred to Where a claim has been merged in an actual judgment, the right under the judgment is assignable, and the nature of the chose in action is generally immaterial *Comegys* v. *Vassee, 1 Peter 193, Dugas* v. *Mathews, 9 Georgia 510, Charles* v. *Hoskins, Iowa 329 77 Am Dec. 148, Moore* v. *Howell, 94 N. C. 265, Stewart* v. *Lee, 70 N. H 181 46 At. 31*, referred to. Future maintenance awarded by decree when falling due can be recovered by execution of that decree without further suit, and hence the decree-holder in this case was entitled to recover in execution without further suit the allowance as it accrued due. *Ashutosh Bannerjee* v *Lukhimoni Debya, I. L. R. 19 Calc. 134*, referred to. ASAD ALI MOLLAH *v.* HAIDAR ALI (1910) . . . . **I. L. R. 38 Calc. 13**

MAINTENANCE GRANT.

See RENT . **I. L. R. 38 Calc. 278**

MAJORITY ACT (IX OF 1875).

———— **ss. 2, 3**—*Hindu law—Majority—Testamentary capacity of Hindus. Held*, that a Hindu domiciled in the United Provinces cannot execute a valid will until he has reached the age of majority as prescribed by the Indian Majority Act, 1875. HARDWARI LAL *v* GOURI (1911)
I. L. R. 33 All. 525

MALABAR COMPENSATION FOR TENANT'S IMPROVEMENTS ACT (MAD. I OF 1900).

———— **ss. 5, 6, 9 to 19**—*Contract to claim compensation according to custom, no special contract within the meaning of s 19—Tenant can claim higher rates under Act in spite of contract before Act prescribing a lesser rate.* Where, under a contract entered into in 1872, the tenant has agreed to accept compensation for improvements according to local custom, such undertaking by the tenant is not a special contract within the meaning of s. 19 of Madras Act I of 1900 which will debar the tenant from claiming under s. 5 compensation as provided in ss 6-18. *Kerala Varmah Valia Rajah* v *Ramunni, 3 Mad L J. 51*, referred to S. 19 of Act I of 1900 deals only with contracts limiting the right to make improvements and claim compensation. A mere contract regulating the rates of compensation whether before or after the 1st day of January

MALABAR COMPENSATION FOR TENANTS' IMPROVENENTS ACT (MAD. I OF 1900)—*concld.*

——— ss. 5, 6, 9 to 19—*concld.*

1886 is not touched by s. 19 Where there is such a contract, the tenant, if the contract rates are lower than the rates provided in the Act, can claim the latter rates under s. 5; and if the contract rates are higher, he can claim such rates notwithstanding s 6 of the Act KOZHIKOT SREEMANA A VIKRAMAN *v* CHUNDAYIL ANANTA PATTER (1910) **I. L. R. 34 Mad. 61**

MALICIOUS PROSECUTION.

——— **Complaint laid, but no process issued**—*Action on the case—Cause of action—Criminal Procedure Code (Act V of 1898), ss 202, 203—Defamation—Privilege.* Where a complaint had been laid before a Magistrate by the defendant against the plaintiff for criminal breach of trust, and the Magistrate had referred the matter to the Police under s. 202 of the Criminal Procedure Code, for enquiry and report and finally dismissed the complaint under s 203 of the Criminal Procedure Code, without issuing process :—*Held*, that the prosecution had not commenced and no suit for malicious prosecution was maintainable *Yates* v *The Queen, L R. 14 Q B. D 648*, and *Clarke* v. *Postan, 6 C. & P. 423*, referred to. Nor would there lie any action on the case analogous to malicious prosecution. *Held*, further, that the complaint, even if defamatory, was absolutely privileged. GOLAP JAN *v.* BHOLANATH KHETTRY (1911) **I. L. R. 38 Calc 880**

MALIKANA.

——— *Malikana or dasturat, payable to proprietors out of whose estate jagir carved —Mode of assessment—Amount, if fixed or variable —Resumption of jagir by Government—Permanent settlement of specific mouzahs—Malikana allowance if liable to alteration. Jagir* Meherullah Khan was granted by Emperor Alamgir out of an estate belonging to the appellant's predecessors who thereupon became entitled to an allowance by way of compensation known as *dasturat* or *malikana*. The East India Company on acquiring the Dewani made enquiries regarding the amount of the *malikana* due on account of this and other *jagirs* and by parwanas fixed the *malikana* due on this *jagir* at R796 odd calculating it at 10 per cent of the proceeds for the year 1778: *Held*, on a construction of the parwanas, that what was fixed was the amount and not a percentage varying from year to year with the proceeds. That the Government on resuming the *jagir* became liable to pay this *malikana*, but when subsequently it caused Mouzah Sahu, one of the mouzahs comprised in the *jagir*, to be permanently settled it incurred no liability to pay an additional sum as *malikana* due in respect of the mouzah. That the fact that a specified sum, *viz.*, of R482 was entered as *malikana* in an account attached to the settlement did not show that the *malikana* as fixed previously was thereby altered, but that it was merely one of

MALIKANA—*concld*

the items to be taken into account in fixing the annual *jumma* to be paid by the person with whom the settlement was made RAMESHWAR SINGH *v.* THE SECRETARY OF STATE FOR INDIA (1911) **15 C. W N. 1029**

MAMLATDARS' COURTS ACT (BOM. ACT II OF 1906).

——— ss. 19, 23 (1), (2)—*Civil Procedure Code (Act V of 1908), s 115—Possessory suit—Decree of the Mamlatdar dismissing the suit—Application to the Collector—Revision—Non-interference with legal and regular findings of fact—Entry in Revenue Record.* A Collector acting under s 23 of the Mamlatdars' Courts Act (Bom Act II of 1906) is not authorized to interfere with the findings of fact of the mamlatdar in a promissory suit, the findings being on their face legal and regular and arrived after a consideration of the evidence on record. The provisions of cl. (*2*) of s. 23 of the Act, which empower the Collector to interfere by way of revision when he considers any proceeding, finding or order in a suit to be improper must be harmonized with the provision in cl (*1*) that there shall be no appeal from any order passed by a Mamlatdar. *Semble* The word 'improper' in cl (*2*) of s. 23 of the Mamlatdars' Courts Act (Bom Act II of 1906) has no different meaning from the word 'irregular' occurring in the expression 'irregularity' in s 115 of the Civil Procedure Code (Act V of 1908) The entry of a person's name as owner or occupier in the books of Revenue Authorities is not in itself conclusive evidence either of title or possession. *Fatma kom Nubi Saheb* v. *Darya Saheb, 10 Bom H. C. 187, 189*, and *Bhagoji* v. *Bapuji, I L. R. 13 Bom. 75*, referred to KASHIRAM MANSING *v.* RAJARAM (1911) **I. L. R. 35 Bom. 487**

MANDAMUS.

——— *Specific Relief Act (I of 1887), ss 45, 46—Mandamus, writ of, on the Board of Revenue—Want of necessary party—Other legal remedy being available whether the Court will interfere.* A *mandamus* will never be granted to enforce the general law of the land which may be enforced by action. *A* having obtained a decree for recovery of possession of an estate against an infant under the Court of Wards, and the Collector of the District representing that Court, applied during the pendency of an appeal by the defendants to the High Court, to the Members of the Board of Revenue forming the Court of Wards that the estate might be released in his favour This application having been rejected *A* obtained a Rule from the Original Side of the High Court under s. 45 of the Specific Relief Act, calling upon the Members of the Board only to show cause why they should not forthwith release the estate. The Rule was not served upon the infant, whose interest would be affected if the Rule were made absolute: *Held*, that inasmuch as the petitioner had failed to comply with Rule 483 of the Rules of the High Court, Original Side, by not serving the Rule upon the infant, and that inasmuch as he had an adequate legal remedy

MANDAMUS—*concld.*

by way of execution of the decree obtained by him, the Rule was liable to be discharged, and the petitioner could not get any relief under s. 46 of the Act. *Held*, further, that unless the Court was satisfied that the doing of or forbearing from an act was consonant to right and justice, and such doing and forbearing was under any law for the time being in force clearly incumbent on the person against whom the order was sought, no *mandamus* ought to be granted; and that title to property would not be tried in *mandamus* proceedings and the writ would not issue when it was necessary to try or decide complicated or extended questions of fact KESHO PRASAD SINGH *v* THE BOARD OF REVENUE (1911) . . I. L. R. 38 Calc. 553

MANDATORY INJUNCTION.

See FOOTINGS . I. L. R. 38 Calc. 687

MASTER AND SERVANT.

See BENGAL MOTOR CAR AND CYCLE ACT, S 3.
I. L. R. 38 Calc. 415; 15 C W. N. 390

See PENAL CODE, S 379
15 C. W. N. 414

MARKETABLE TITLE.

See SPECIFIC PERFORMANCE.
I L. R. 35 Bom. 110

MARRIAGE.

See HINDU LAW . I. L. R 38 Calc. 700
I. L. R. 34 Mad. 277

See MAHOMEDAN LAW—MARRIAGE
15 C. W. N. 991

——— evidence and recognition of—

See HINDU LAW—MARRIAGE
I. L. R 38 Calc. 700

——— Contract to pay money to a mother for giving her daughter in marriage *—Public policy—Hindu Law—Contract Act (IX of 1872), s. 23.* A contract whereby a guardian whether natural or appointed agrees to dispose of his ward in marriage for his own personal pecuniary gain is not enforceable in a Court of law. *Dholidas Ishvar* v. *Ful Chand Chagan, I. L. R. 22 Bom. 658; Venkata Krishnayya* v. *Laksmi Narayyana, I. L. R. 32 Mad. 185, Ram Chand Sen* v. *Audaito Sen, I. L. R. 10 Calc. 1054* (the opinion expressed by *Garth, C J.*), followed. *Juggeswar Chuckerbutty* v. *Punchcowree Chuckerbutty, 14 W. R 154; Ranee Lallun Monee Dossee* v. *Nobin Mohan Singh, 25 W. R. 32; Bakshi Das* v. *Nadu Das, 1 C. L. J. 261, 265*, distinguished. *Vesvanathan* v. *Saminathan, I. L. R. 13 Mad. 84*, dissented from. The rule rests on the broad and general principle that where any one is in a fiduciary position with respect to a person and is bound to exercise skill, care and judgment for the benefit of that person, he must not take a reward from some other person for the exercise of his powers in some particular way, whether the course taken is in fact beneficial

MARRIAGE—*concld.*

or the reverse to the person whose interest he is bound to protect. Where a Hindu mother sought to recover a sum of money which the defendant had agreed to pay to her in consideration of her consenting to give her daughter in marriage to his son *—Held*, that the suit was not maintainable, the agreement being opposed to public policy. BALDEO DAS AGARWALLA *v.* MOHAMAYA PERSAD (1911) . . . . 15 C. W N. 447

MARRIAGE SETTLEMENT.

See JEWISH LAW I. L R 38 Calc 708

MARSHALLING OF SECURITIES.

See MORTGAGE . I L R. 35 Bom. 395

MARUMAKATAYAM LAW.

——— *Tarwad is the heir to the property of a deceased member, subject to the liability to discharge debts of deceased—Devolution of property, acquired by or for benefit of Tavazhi—Survivorship—Property acquired by individual member, devolution of.* Co-parcenary exists among the members of an undivided Malabar Tarwad. Where therefore one of the members dies, the Tarwad is the heir to the property of deceased subject to the liability to discharge the debts of the deceased member. *Ryrappan Nambiar* v *Kelukurup, I. L. R. 4 Mad. 150*, referred to. Where property is acquired for the benefit of the Tavazhi, the incidents of such property will depend on the constitution of the Tavazhi. If the Tavahzi forms a distinct branch from the main Tarwad with separate properties and has its own karnavan, it will, in law, form a Tarwad and the incident of Tarwad property will attach to it. None of the members will have an alienable interest in such property and it cannot be attached in execution of a decree against any of the members. *Kanath Puthen Vittil Tavazhi* v. *Narayanan, I. L R. 28 Mad. 182, 189*, referred to. If, however, the members of the Tavazhi have not separated from the main branch by taking their share of Tarwad property or renouncing their interest therein, the mere acquisition of such property will not make them a separate Tarwad and the karnavan of the main Tarwad will retain all his rights and obligations towards them. The property will be the separate property of the Tavazhi and not Tarwad property and the incident of impartibility, which attaches to Tarwad property, will not attach to it. The interest of each member will be the same as in an ordinary Hindu family and will be liable to be attached and sold. If, however, any member dies without his interest being alienated, in his life-time, his interest lapses to the other members and it cannot be sold. *Kunhachumma* v. *Kuttimamini Hajee, I. L. R 16 Mad 201*, referred to. If property is acquired solely for the benefit of two members of a Tavazhi they must be treated as tenants in common. They cannot be treated as a separate branch and on the death of one, the share will pass to the heir of the deceased which according to the preponderance of authority will be the Tarwad. The principle of joint tenancy

MARUMAKATAYAM LAW—*concld.*

is unknown to Hindu Law except in the case of the members of an undivided Hindu family. *Joyeswar Narain Deo* v *Rumchendra Dutt, I L R 23 Calc 670*, referred to. UMMANGA *v* APPADORAI PATTER (1910) . . **I L. R. 34 Mad. 387**

MAXIMS.

See ACTIO PERSONALIS MORITUR CUM PERSONA . . **I. L. R. 35 Bom. 12**

MESNE PROFITS.

See HINDU LAW—WIDOW
15 C. W N. 383 ; 859

——— *Civil Courts Act (XII of 1887), ss 18, 19, 21—Civil Procedure Code (Act XIV of 1882), ss. 211, 212, 244—Jurisdiction—Mesne profits, antecedent to the suit, decree for, if can be executed to an amount which taken with the value of the land would exceed jurisdiction of Court passing decree—Mesne profits, pendente lite, exceeding the pecuniary jurisdiction of the Court making the decree—Forum of application for recovery* Where a plaintiff instituted his suit for possession of property and mesne profits in the Court of a Munsif and valued it so as to bring it within the jurisdiction of the Munsif and the suit was decreed —*Held*, that he could not recover mesne profits accruing before the institution of the suit to the extent of more than the difference between the maximum pecuniary jurisdiction of the Munsif and the value of the land as stated in the plaint. *Golap Singh* v *Indra Kumar, 9 C L J. 367 s c 13 C W N. 493*, followed. *Sudarsham* v. *Rampershad, 7 Ind Cas. 785*, not followed. In this respect mesne profits antecedent to the institution of the suit and mesne profits *pendente lite* in respect of which the cause of action had not arisen at the date of the suit and which could not at that date be approximately valued stand on a different footing. *Held*, further, that the value of the mesne profits *pendente lite* claimed in the application for execution of the decree being in excess of the pecuniary jurisdiction of a Munsif, the Munsif had no jurisdiction to entertain the application. *Rameswar* v. *Dilu, I. L. R. 21 Calc 550*, distinguished and doubted. *Gulab* v. *Abdul, 8 C. W. N 233 s c. I. L R 31 Calc. 365, Iyyatulla* v. *Chandra Mohan, I. L. R 34 Calc 954. 11 C. W N. 1133 · s c. 6 C L. J. 255, Golap Singh* v. *Indra Kumar, 9 C L. J. 367 s c. 13 C. W. N. 493, Manmalal* v. *Samanda, 46 P. R. 1906. 94 P. L. R. 1906*, referred to. In so far as the application for mesne profits *pendente lite* was concerned, the Court therefore directed its return for presentation to the proper Court. No objection as to the jurisdiction of the Court to try the original suit having been raised before the decree and the decree as to recovery of land having become final, the Court refused to give effect to the contention that in view of the amount of mesne profits now claimed the Court had no jurisdiction to make the decree. BHUPENDRA KUMAR CHAKRABARTI *v.* PURNA CHANDRA BOSE (1910)
15 C. W. N. 506

MINERAL RIGHTS

See MINES

——— **Lease**—*Lessee for years or for life —Lessee in perpetuity—Intention of parties—Landlord's rights* It is well settled in England that a tenant for life or for years has no right to work unopened mines *Clegg* v. *Rowland, 2 Eq 160*, and *Campbell* v *Wardlaw, 8 Ap Cas 641*, referred to *Gordon, Stuart & Co* v *Tikaitnee Seobas Kowaree, (1864) W R 370*, not followed. *Prince Mahomed Buktyar Shah* v *Rani Dhojamani, 2 C L. J 20*, and *Tituram Mukerji* v *Cohen, I L R 33 Calc 203*, referred to. There is no difference in principle between a lessee for years and a lessee in perpetuity, when nothing is known or can be inferred about the intentions of the parties at the time of the inception of the lease The landlord continues to have a reversion in mines discovered after the inception of the lease. *Kally Dass Ahiri* v. *Monmohini Dassee, I L R. 24 Calc. 440*, referred to *Abhiram Goswami* v. *Shyama Charan Nandi, I. L R. 36 Calc. 1003*, followed. *Sonet Kooer* v. *Himmut Bahadoor, I L R. 1 Calc 391 L R. 3 I. A. 92*, referred to. *Ishwar Shyam Chand Jiu* v *Ram Kanai Ghose, I L R 38 Calc 526*, not followed *Shama Charan Nandi* v. *Abhiram Goswami, I L. R 33 Calc. 511*, and *Megh Lal Pandey* v. *Rajkumar Thakur, I L R. 34 Calc 358*, distinguished. *Brojonath Bose* v. *Durga Prosad Singh, I L. R. 34 Calc 753*, not followed and held to be practically overruled by *Hari Narayan Singh Deo* v *Sriram Chakravarti, I. L R 37 Calc 723 L R. 37 I. A. 136* JYOTI PRASAD SINGH *v* LACHIPUR COAL COMPANY (1911)
I L R. 38 Calc. 845

MINES.

——— *Coal mines—Royalty received by proprietor of estate from lessees of coal mines—Liability to Cess under Bengal Cess Act (Bengal Act IX of 1880), ss. 6 and 72—Return of "annual net profits" of coal mines—Income-tax. Held* (upholding the decision of the High Court), that a royalty received by the appellant from person to whom he had leased a portion of his estate in Bengal for the purpose of working the coal mines situated therein, was, within ss. 6 and 72 of the Bengal Cess Act (Ben Act IX of 1880), part of the "annual net profits" of the mines, and that he had been properly assessed with cess on such royalty. The return required by s 27 was not with regard to the mine-owner's profit, but had reference to the general net profits of the property. The fact that the obligation to make the return was laid on the person most cognizant of the circumstances under which the mine was worked and of the profits derived from it, did not alter the character of the royalty received by the proprietor for his share of the property of the mine. MANINDRA CHANDRA NANDY *v.* SECRETARY OF STATE FOR INDIA (1910). **I. L. R. 38 Calc. 372**

MINOR.

See ARBITRATION **I. L. R. 35 Bom. 153**

See CIVIL PROCEDURE CODE, 1882, s. 462 . **I. L. R. 35 Bom. 322**

MINOR—*concld*

See CONSENT-DECREE.
I. L. R. 38 Calc. 639

See GUARDIAN . I. L. R. 38 Calc 783

See MAHOMEDAN LAW—ALIENATION.
I. L. R. 35 Bom. 217

See PRACTICE . I. L. R. 35 Bom. 339

——— capacity of, to be transferee—

See CONTRACT ACT (IX OF 1872), SS 10 AND 11 . . I. L. R. 33 All. 657

——— Fraud—Misrepresentation—*Minor—Estoppel—Evidence Act (I of 1872), s 115—Co-sharer landlord, notice to quit by, if valid* When a person between 18 and 21 years of age executes a conveyance with the knowledge that his minority has been extended by reason of an order under s 7 of the Guardians and Wards Act in favour of vendees who are not aware of that fact, there is misrepresentation and legal fraud on his part, and he is estopped from taking advantage of his minority to show that the conveyance by him is inoperative *Mohun Bibi* v *Sarat Chand, 2 C W. N 18, Dhanmull* v. *Ram Chunder, I. L R 24 Calc. 265*, relied on *Mohori Bibee* v. *Dharmodas Ghose, I L R 30 Calc. 539 s c. 7 C W N. 441*, referred to SURENDRA NATH ROY *v* KRISHNA SAKHI DASI (1910) . . 15 C. W. N. 239

MISCHIEF.

See COURT OF WARDS
15 C. W. N. 224

See CRIMINAL TRESPASS.
I. L. R. 38 Calc. 180

MISJOINDER.

See CHARITABLE TRUSTS.
I. L. R. 34 Mad. 406

See COMMON CARRIER, LIABILITIES OF.
I. L. R. 38 Calc. 28

——— of causes of action—

See CIVIL PROCEDURE CODE, 1882, SS 13. 44 . I. L. R. 35 Bom. 297

1. ——— Misjoinder of causes of action—*Persons whose separate rights have been infringed by a single act of another cannot join in one suit—Course to be adopted when there is a misjoinder of causes of action—Civil Procedure Code, Act V of 1908, s 99.* Where the separate right of each of several persons is affected by a single act of another person, each of such persons has a separate cause of action against such other person and they cannot bring a suit jointly against such other person. *Smuthwaite* v. *Hannay*, [*1894*] *A. C. 494*, referred to. Where there has been a misjoinder of cause of action, which has prejudiced the defendant on the merits and no objection to such misjoinder was taken in the written statement or at the settlement of issues, the provisions of s. 99 of the Civil Procedure Code Act V of 1908 will apply and the ends of justice will be sufficiently met by findings in the case of each separately, instead of dismissing the suit. AIYAVU MUPPAN *v* VELLAYA NADAN (1910)
I. L. R. 34 Mad 55

MISJOINDER—*concld*

2 ——— Joint trial—*Commission of criminal breach of trust in the same transaction as abetment of cheating and attempt to cheat and as part of a common design—Joint trial of one accused under ss. 408 and 420 with another under ss. 420 of the Penal Code—Legality of separate sentences—Concurrent sentences—Criminal Procedure Code (Act V of 1898), s 239* Where *A*, a railway ticket collector, made over two used tickets, which he had collected from passengers, to *B*, and instructed him to apply for a refund of the fares covered by the same, as unused tickets, at the place of issue, and the latter proceeded there and made such an application but was discovered in the act :—*Held*, that the joint trial of *A* on charges under ss 408 and 420 and of *B*, under ss 420 of the Penal Code, was legal under the provisions of s 239 of the Criminal Procedure Code *Parmeshwar Lal* v. *Emperor, 13 C W N. 1089*, distinguished *Subrahmania Ayyar* v *King-Emperor. I. L R 25 Mad. 61*, referred to *Held*, also, that *A* had committed two distinct offences in the same transaction and that separate sentences were not illegal, though concurrent sentences were, under the circumstances, more appropriate. *Re Noujan. 7 Mad. H. C. R. 375*, referred to. The two parts of s. 239 of the Criminal Procedure are not mutually exclusive : so that if *A* includes *B* to cheat, and *B* attempts to do so, they may be tried together for abetment of, and attempt at, cheating respectively ; and if in the course of the same transaction *A* commits the separate offence of criminal breach of trust, in furtherance of the conspiracy to cheat, he may be separately charged for such offence at the same trial. KALI DAS CHUCKERBUTTY *v* EMPEROR (1911)
I L. R. 38 Calc. 453

MISTAKE OF LAW—

——— by arbitrator—

See ARBITRATION.
I. L. R. 35 Bom. 153

MITAKSHARA.

See HINDU LAW—ALIENATION.
I. L. R. 33 All. 654

See HINDU LAW—INHERITANCE.
I. L. R. 35 Bom. 389

See HINDU LAW—JOINT FAMILY.
I. L. R. 33 All. 436

See HINDU LAW—SUCCESSION.
I. L. R. 33 All. 702

See SUCCESSION CERTIFICATE
I. L. R. 38 Calc. 182

MONEY HAD AND RECEIVED.

——— *Money deposited "in usum jus habentis" improperly withdrawn by a person not entitled to it.* Where money is deposited

MONEY HAD AND RECEIVED—*concld.*

in Court *in usum jus habentis*, and it is withdrawn by a person who is declared not to have any right thereto, the money so obtained may properly be held to be received for the use of the person entitled to it. *Latt* v. *Martindale, 18 C B 314*, referred to. MAHDI HUSAIN *v.* SUKH CHAND (1911) **I. L. R. 33 All. 450**

MORTGAGE.

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See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 82 AND 100. **I. L. R. 33 All. 708**

——— by conditional sale—

See CONSTRUCTION OF DOCUMENT. **I. L. R. 33 All. 337; 585**

MORTGAGE—*contd.*

1. ASSIGNMENT.

——— *Assignment of Mortgage—Application of the Rule of damdupat—Transfer of Property Act (IV of 1882), s. 2 (d).* The fact that the person entitled to sue on a mortgage happens by assignment to be a Parsee cannot affect the (Hindu) mortgagor's right to claim the advantage of the rule of damdupat, if it existed when the mortgage was entered into. It is not proper to infer that, because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act (IV of 1882) shall be deemed to affect any rule of Hindu Law, the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of damdupat The right of a mortgagee to sue for his principal and interest arising from a contract must be taken to be made subject to the usages and customs of the contract in parties. JEEWANBAI *v* MANORDAS (1910) **I L. R. 35 Bom. 199**

2. CONSENT DECREE.

——— *Consent decrees between mortgagors and mortgagee—Joint management—Equal division of rent and produce—Prohibition against partition—Mortgagee competent to grant mirasi lease—Mortgagors to get one-fourth of the nazarana (present)—Rights of the mortgagors conveyed to the mortgagee—Equitable mortgage by mortgagee—Settlement by mortgagee in favour of his relations—Suit by equitable mortgagee—Decree—Execution—Auction-purchaser put in possession—Suit by donees under the settlement—Donees entitled to possession—Rights of the parties to be worked out, by amicable settlement or by a suit—Suit by representatives of auction purchaser to recover one-fourth share by partition—Plaintiffs entitled to possession of the share as tenants in common—Mirasi lease by mortgagee's assignee without mortgagor's consent—Lease not to enure for the benefit of the assignee.* The owners of certain land mortgaged it to *S*. In the year 1866 consent decrees, Exhibits 57 and 58, were passed between the mortgagors and the mortgagee *S*. The consent decrees provided that both parties should jointly carry on the management of the land, each being entitled to half of the produce and rent, that the land itself should not be partitioned, that *S* was competent to grant a *mirasi* lease, provided the *nazarana* (present) accepted was not less than R500 and that the said *nazarana* should be divided between the mortgagors and *S* in the proportion of $\frac{1}{4}$ and $\frac{3}{4}$ respectively. The said rights of the mortgagors were subsequently conveyed by them to *S* for consideration, Exhibit 64. Afterwards *S*, in April 1891, deposited Exhibit 64 by way of equitable mortgage with two persons. In October 1891 *S* settled the property which was subject to the equitable mortgage on his relatives *J* and *M*. In 1892 the two equitable mortgagees sued *S* to recover their equitable mortgage debt and got a decree against the property equitably mortgaged and against *S* personally. The property was put up for sale in execution and purchased by

MORTGAGE—*contd.*

2. CONSENT DECREE—*concld.*

H for R5,425 which covered the claim of the equitable mortgagees. *J* and *M* obstructed the auction-purchaser *H* in his attempts to obtain possession, and their obstruction having failed, they brought a suit against *H*. The final decree in the suit made a declaration that as against *H*, *J* and *M* were entitled to the properties and their possession subject to *H*'s right conveyed to the mortgagee *S* under Exhibit 64 and subsequently purchased by *H* and that "the rights of the parties as thus declared must be worked out by amicable settlement between them or by means of a separate suit." The plaintiffs as executors under the will of *H*, deceased, who was deprived of possession under the aforesaid decree, having brought a suit against the assignees of *J* and *M* to recover by partition ¼ share of the land, the lower Courts dismissed the suit for the recovery of ¼ share by partition on the ground that the clause in the consent decrees, Exhibits 57 and 58, affected to prohibit partition. On second appeal by the plaintiffs: *Held*, reversing the decree, that though the plaintiffs as tenants in common would be entitled to partition, yet by virtue of the consent decrees they were estopped from exercising such right. *Held*, further, that though the consent decrees did empower the mortagee *S* to grant a *mirasi* lease without the mortgagor's consent, yet this power did not enure for the benefit of his assignees. COWASJI TEMULJI *v* KISANDAS TICUMDAS (1911)
I. L. R. 35 Bom. 371

3. CONSTRUCTION OF MORTGAGE.

1. ——— *Construction of document—Liability for deficiency in interest whether personal merely or a charge on the mortgaged property* A mortgage deed provided that the mortgagee should take possession of the mortgaged property and out of the rents and profits pay the Government revenue and appropriate R132 per annum on account of interest at the rate of 11 annas per cent per mensem. It further provided that should the amount of profits, calculated on the basis of the patwari's accounts, be found insufficient to cover the whole amount payable for interest, the deficiency would be made good by the mortgagor together with interest at the rate of R2 per cent. per mensem. *Held*, that deficiency in the stipulated interest was realizable as well from the mortgaged property as from the mortgagor personally. *Muhammad Husain* v *Sheodarshan Das, 4 All L J. 176*, referred to. CHINTAMAN *v* DULARI (1910)
I. L. R. 33 All. 107

2. ——— *Construction of mortgage—Mortgage with interest partly in kind and partly in cash—Interest when payable—Suit for arrears of interest—Words amounting to covenant to pay year by year* In this case their Lordships of the Judicial Committee held (reversing the decision of the High Court) that on the true construction of the mortgage there was clearly a personal covenant to pay interest on the mortgage-money

MORTGAGE—*contd.*

3. CONSTRUCTION OF MORTGAGE—*concld.*

from year to year, and that the suit, which was for arrears of interest, was therefore maintainable. MADAPPA HEGDE *v.* RAMKRISHNA NARAYAN (1911)
I. L. R. 35 Bom. 327

3. ——— *Mortgage bond—Construction—Personal decree, suit for—Mortgaged properties, if must be first proceeded against. Held*, on the construction of the mortgage bond in this case, that it contained an express promise to pay the amounts secured, so that the mortgagee was entitled to sue for a personal decree only *Held*, further, that a stipulation that "if the debt be not paid off by the hypothecated properties," the mortgagee "will be able to realise the money" by sale of the mortgagor's other moveable and immoveable properties, did not imply that the part agreed to postpone the remedy against the person and other properties to that against the mortgaged properties BENOY KRISHNA DEB *v.* DEBENDRA KISHORE NANDY (1911) . **15 C. W. N. 722**

4. ——— *Simple or anomalous mortgage—Covenant to pay—Option of mortgagee to take possession on default of payment of interest—Mortgage if usufructuary—Decree for sale, if proper. Held*, on the terms on the bond in suit, that it was a simple mortgage. A simple mortgagee is entitled to a decree for sale as a matter of course, notwithstanding that under the terms of the mortgage-bond he has the option, on the mortgagor's default in payment of interest, to "take possession of the mortgaged properties and to enjoy the same, as under a usufructuary mortgage." KRISHNA BHUPATI DEVU GARU *v.* SULTAN BAHADUR OF VIZIANAGRAM (1911) . . **15 C. W. N. 441**

4. ESTOPPEL.

——— *Estoppel—Mortgage of entire property by owner of half share—Purchase by defendant of entire property pending mortgage suit—Sale and purchase by mortgagee in presence of defendant—Defendant if estopped from proving title to the other half—Ignorance of plaintiff of real fact and misleading by defendant's conduct, to be proved. J*, who owned a half share in a property, purported to mortgage the whole After a preliminary decree had been passed in favour of the mortgagee in his suit gainst *J* brought on the mortgage, *N* purchased the interest of *J* and his co-sharer and was brought on the record as the successor in interest of *J*. The mortgage decree was thereafter made absolute and the property put up to sale and purchased by the mortgagee In a suit by the latter against *N* to establish his title to the entire mortgaged property, *held*, that *N* would not be estopped from showing that the mortgage sale passed only *J*'s half share in the property to the plaintiffs, unless it was established that the mortgagee was not aware that *J* had only a half share in the property which he purported to mortgage and that he was misled by some representation by conduct of

MORTGAGE—*contd.*

4. ESTOPPEL—*concld.*

N into believing that *J* had full title KAMAL KUMAR NANDI *v.* KALI MEAH (1911) **15 C. W. N. 572**

5 EXECUTION OF MORTGAGE DECREE.

1. ——— **Order in which properties to be sold, discretion of Court as to**—*Execution of mortgage decree—Partial execution, application for, if may be entertained* Two properties, A and B, were mortgaged by one deed by *S.* Subsequently *S* sold the property A to one *R.* The mortgagor brought a suit on the mortgage and got a decree against *S* and *R.* The decree-holder applied for execution against both the properties, but the Court in the exercise of its discretion ordered execution against the property B in the first instance. Thereupon the decree-holder had the petition for execution dismissed and made a fresh application for execution against the property A alone *Held*, that the discretion as to the order in which the execution should issue is vested in the Court alone and the decree-holder cannot be allowed to fetter the hands of the Court by a petition for partial execution *Held*, also, that execution could not be ordered unless the decree-holder included both the properties in his petition. *Amir Chand* v. *Bakshi Sheo Pershad, I. L R 34 Calc 13*, distinguished MAHOMED SADDIK *v* SAUDAGAR MIAN LAHARI (1910) . . . **15 C. W. N. 80**

2 ——— **Mortgage by co-parcener**—*Hindu Law—Mitakshara—Decree directing property to be held in specific shares and charging mortgagor's share with the mortgagee's dues if enforcible in execution—Separate suit to enforce lien, if necessary.* A mortgage by a co-parcener in a Mitakshara joint family was declared to be void in so far as it purported to affect the specific share of the mortgagor, but the Court directed by its decree that the mortgagor and his co-sharers do hold the properties in specified shares and that the share of the mortgagor be held subject to the lien of the mortgagee for the sum advanced with interest The mortgagor or his co-sharers not having asked to redeem the share of the mortgagor by paying off the mortgage money with interest, no decree for redemption was made: *Held*, that the mortgagee could bring the share to sale in execution of the decree and it was not incumbent on him to institute a separate suit to enforce the lien. RAM SUNDAR DAS *v* NATHUNI SINGH (1911) **15 C. W. N. 748**

3. ——— **Interest**—*Transfer of Property Act (IV of 1882), ss. 83, 84—Mortgage, interest on, up to what date payable—Prior incumbrancers joined in suit by puisne mortgagee, if may get interest at contract rate after date fixed in preliminary decree for repayment.* A puisne mortgagee having joined the prior mortgagees in his suit, a decree was passed fixing the period of redemption for the plaintiff but not in regard to the prior incumbrances. The decree did not also determine the amounts payable to the latter. In execution the property was sold and the purchase-money deposited Subsequently the mortgagor brought a suit to set aside the sale which was ultimately dismissed and the sale was then confirmed. On the question up to what date the prior mortgagees would be entitled to get interest· *Held*, that interest would be payable on the principle of s. 84 of the Transfer of Property Act up to the date of confirmation of sale and not up to the date fixed for payment in the decree. Although it may be open to the Court to distribute the sale-proceeds amongst the claimants before the sale has been confirmed it is not obligatory on the Court to distribute it then nor is the sum distributable as a matter of course. Order for distribution ought not ordinarily to be made before the confirmation of the sale. *Jogendra Nath Sirkar* v. *Gobind Chunder Addi, I L R 12 Calc 252, Hafiz Mahomed Ali Khan* v. *Damodar Pramanik, I L R. 18 Calc. 242*, explained The order for distribution by the Court was a decree within s. 2 read with s. 47, sub-s (*1*), of the Civil Procedure Code and appealable as such. BENODE LAL BANDOPADHYA *v* HARISH CHANDRA TEWARI (1910) . **15 C. W. N. 783**

MORTGAGE—*contd.*

5. EXECUTION OF MORTGAGE DECREE —*concld.*

6 PARTITION, EFFECT OF.

——— **Mortgagee of undivided share**—*Effect of subsequent partition—Mortgage takes effect on substituted share.* A mortgagee of an undivided share in common property or of one of the joint properties before partition from one of the sharers is only entitled to proceed against the substituted property which falls to the share of the mortgagor at the partition unless the partition has been unfair or in fraud of the mortgagee. MUTHIA RAJA *v* APPALA RAJA (1910) **I. L. R. 34 Mad. 175**

7. PRIORITY.

1. ——— **Prior and subsequent mortgagees**—*Decree obtained on a prior mortgage satisfied by execution of a fresh mortgage in favour of decree-holder—Priority over an intermediate mortgage.* A decree for sale upon a mortgage of 1895 was obtained in 1901. In 1903 the decree-holder accepted in satisfaction of the decree a sale deed of a certain portion of the mortgaged property, but this adjustment was never certified to the court. Subsequently the decree was put into execution and a sale was ordered, but before it was carried out the parties came to terms, and the judgment-debtor executed a fresh mortgage to secure the decretal amount. This was in May, 1904. Meanwhile, in April, 1904, another mortgage had been executed by the judgment-debtor *Held*, that the mortgage of May, 1904, being in satisfaction of the earlier mortgage of 1895 had priority over that of April, 1904. *Kanhaiya Lal* v *Chedda Singh, 7 All. L J. 984*, and *Shyam Lal* v. *Basiruddin, I. L. R. 28 All. 778*, followed RAHIMUNNISSA *v.* BADRI DAS (1911) . . . **I. L. R. 33 All. 368**

MORTGAGE—*contd.*

7. PRIORITY—*concld.*

2. ——— *Prior and subsequent mortgagees—Sale of mortgaged property in execution of prior mortgagee's decree—Subsequent mortgagee no party to suit—Price to be paid by subsequent mortgagee seeking to reedem.* A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the mortgaged property may have been purchased at an auction sale held in execution of a decree obtained by a prior mortgagee without joining the subsequent mortgagee as a party, but such subsequent mortgagee must, if he wishes to redeem, pay to the prior mortgagee the full amount due on the prior mortgage. *Dip Narain Singh* v. *Hira Singh, I L. R 19 All. 527*, applied PHULMANI CHAUDHRAIN *v* NAGESHAR PRASAD (1911) **I. L. R. 33 All. 370**

3. ——— *Mortgage of chattel—Priority—Prior mortgagee inducing subsequent encumbrancer to advance money as first charge.* Where a first mortgagee was an assenting party to the mortgage or charge executed in favour of a subsequent incumbrancer, and actually obtained a large portion of the mortgage money thus raised, and the subsequent mortgage contained an express covenant that the property mortgaged was free from encumbrances : *Held*, that the prior mortgagee having thus concurred in inducing the subsequent incumbrancer to advance money as a first charge could not turn round and claim priority over that charge in favour of his own mortgage subsisting from an earlier date. RAMAN CHETTY *v* STEEL BROTHERS AND COMPANY (1911) **15 C. W. N. 813**

8. REDEMPTION.

1. ——— *Mortgagor out of possession—Equity of redemption—Gift of, in moiety of mortgaged property—Transfer of Property Act, ss. 68, 74 and 91—English Conveyancing and Law of Property Act, s. 14.* The discharge of a mortgage merely enlarges the security of a subsequent encumbrancer or adds to the interest of the owner of the equity of redemption Where *A* is the owner of the equity of redemption in a moiety of certain property under a gift, though the right to possession was outstanding in the mortgagee at the date of the gift, *A* is entitled to possession of the moiety on the discharge of the mortgage. Transfer of Property Act, ss. 60, 74, 91. discussed and compared with the English Conveyancing and Law of Property Act, s. 15. PONNAMMAL *v.* KALITHITHA MUDALI (1910) **I. L. R. 34 Mad 115**

2. ——— *Redemption—Bengal Regulation No. XV of 1793, s. 10—"Redeemed," meaning of—Jurisdiction—Bengal, N.-W. P and Assam Civil Courts Act (XII of 1887), s. 19—Competence of Court to pass a decree for an amount exceeding the pecuniary limits of its jurisdiction. Held*, that the word "redeemed" as used in s. 10 of Regulation XV of 1793, was not

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

used in the sense that the mortgage had been redeemed in the full sense of that word, that is, satisfied and possession given to the mortgagor. So long, therefore, as the property remains in the hands of the mortgagee, the mortgagor can bring a suit for redemption even if the mortgage had been satisfied over 12 years before suit. *Held*, also, that where a suit as filed is within the pecuniary jurisdiction of a court, the jurisdiction of the Court is not ousted by the subsequent discovery that a sum is in fact due to the plaintiff exceeding the pecuniary limits of the jurisdiction *Madho Das* v *Ramji Patak, I L. R 16 All 286*, followed. *Golap Singh* v. *Indra Coomar Hazra, 13 C. W. N. 493*, dissented from. SUDARSHAN DAS SHASTRI *v.* RAM PRASAD (1910) . . . . **I. L. R. 33 All. 97**

3. ——— **Right to redeem one of two properties separately mortgaged** Two persons mortgaged certain property in 1879 In 1883 one of the mortgagors executed a mortgage comprising in part property subject to the mortgage of 1879 and in part other property in favour of the same mortgagee This latter mortgage contained a stipulation that the mortgagor would redeem if before redeeming the mortgage of 1879. Certain property comprised in the first mortgage, but not in the second, was sold, and the purchasers sued for redemption of that mortgage alone. *Held*, that in the circumstances they were not precluded by the covenant in the second mortgage from redeeming the first. GANGA RAI *v.* KIRTARATH RAI (1911) . . . . **I. L. R. 33 All. 393**

4. ——— **Sale by mortgagor of his rights**—*Third person redeeming the mortgage at mortgagor's desire—Sale-deed unregistered—Sale-deed could be looked at for evidence of payment of money—Suit by mortgagor to redeem ignoring sale—Lienor's rights—Adverse possession by lienor—Registration Act (III of 1877), s. 17—Evidence Act (I of 1872), s 91—Limitation Act (XV of 1877), Arts. 132, 144.* The plaintiff mortgaged certain property with possession with defendant No. 1 for R601, on the 4th April 1873. On the 25th November 1878, defendants Nos. 2 to 4, at the request of the plaintiff, paid off the mortgage to defendant No. 1 ; and for the sum so paid and for a further payment of R50, the plaintiff sold the property to defendants Nos. 2 to 4. The document as to the sale was not registered ; but ever since the purchase, the defendants Nos. 2 to 4 were in possession as owners. In 1907, the plaintiff filed a suit to redeem the mortgage of 1873. The defendants Nos 2 to 4 set up in reply the sale of 1878 and contended that the suit was barred by limitation : *Held*, that the sale-deed being unregistered could not be looked at for proving the sale, but it could be looked at as evidence of payment of money. *Mahadnappa bin Danappa* v. *Dari bin Bala, (1875) P J. 299*, and *Waman Ramchandra* v *Dhondiba Krishnaji, I L. R. 4 Bom. 126*, followed. *Held*, further, that the redemption having been made by

MORTGAGE—*contd*

8. REDEMPTION—*concld*

the defendants for the plaintiff with his knowledge and consent, they became entitled to hold the property as henors and the plaintiff could not recover it from them without paying the amount of R651 *Mahomed Shumsool v Shewukram, L R 2 I A. 17*, followed *Held*, further, that the defendant's lien was alive for twelve years after 1878, that is, up to the year 1890 (Art. 132 of the Limitation Act of 1877); that when that period expired, the lien was gone and their possession after that was without any right; and that their title by adverse possession was perfected in 1902 *Ramchandra Yashvant Sirpotdar* v. *Sadashiv Abaji Sirpotdar, I L. R 11 Bom. 422*, explained SAMBHU BIN HANMANTA *v.* NAMA BIN NARAYAN (1911)

I. L. R. 35 Bom. 438

9. SALE OF MORTGAGED PROPERTY

1. ——— *Preliminary mortgage decree—Application for sale of mortgaged property—Limitation Act (IX of 1908), Sch I, Arts. 181, 182 and 183—Transfer of Property Act (IV of 1882), ss 88 and 89—Civil Procedure Code (Act V of 1908), O XXXIV, rr. 4 and 5, O. XLI, r. 20—Party, addition of.* A preliminary mortgage decree under s. 88 of the Transfer of Property Act, 1882, does not require, and is not followed by any supplemental decree, but only, if necessary, by an application for an order absolute for sale under s 89 of the Transfer of Property Act Such an application is a petition for realization by the mortgagee of his decree, and is an application "to enforce a judgment or decree," etc, within the provisions of Art 183 of the Limitation Act, 1908. *Harendra Lal Roy Chowdhri* v. *Maharani Dasi, I. L. R 28 Calc. 557 L R. 28 I A 89*, referred to *Madhab Mani Dasi* v *Lambert, I. L R. 37 Calc 796 15 C. W. N. 337*, discussed It is a question for the Court in its discretion to determine in each case whether or not it will make an order for the addition of a party as contemplated by O. XLI, r. 20, of the Code of Civil Procedure, 1908. AMLOOK CHAND PARRACK *v.* SARAT CHUNDER MUKERJEE (1911) . . . **I. L. R. 38 Calc. 913**

2. ——— *Private sale of mortgaged property—Consideration, left with purchaser for discharge of two mortgages—First mortgage alone discharged—Suit for sale by second mortgagee—Purchaser not entitled to hold up first mortgage as a shield.* Where a purchaser of mortgaged property undertook to discharge out of the purchase money two subsisting mortgages, and in fact discharged only the earlier one; *Held*, that it was not competent to him to hold up this mortgage as a shield against the suit of the puisne mortgagee for sale. *Gopal Das* v. *Puran Mal, I. L. R 10 Calc 1035, 1046*, referred to. MUHAMMAD SADIQ *v* GHAUS MUHAMMAD (1910) . . **I. L. R. 33 All. 101**

3. ——— *Purchase of mortgaged property by mortgagee, application of sale-proceeds to reduce the debt, debt if pro tanto extinguished—Mortgagee if may proceed solely against*

MORTGAGE—*contd.*

9. SALE OF MORTGAGED PROPERTY—*contd*

other properties—Portion of security if may be released by mortgagee—Purchasers of equity of redemption, position of. Where a mortgagee purchased portions of the mortgaged property for a fair price without fraud or undue influence and applied the purchase-money to the reduction of the debt under an agreement to the effect, and it appeared that the property was intended to be conveyed free of the mortgage:—*Held*, that as between the mortgagor and the mortgagee the mortgage was not *pro tanto* diminished and that the debt remaining due after deducting the purchase-money was chargeable on the rest of the property The effect of the transaction must be judged by its nature, *i.e.*, whether the sale was of the equity of redemption only or of the property freed of the mortgage *Held*, also, that subsequent purchasers of the equity of redemption in the remaining portion of the mortgaged property stood in the shoes of the mortgagor and could not object to having the whole mortgage-debt realised by sale of the property in their hands. Where there are no other persons having a lien on the same property it is settled that as between the parties to the mortgage the mortgagee is entitled to release a portion of the hypothecated property and impose the whole lien upon the residue. A subsequent purchaser of the equity of redemption of the residue therefore cannot object to the release and require the property so released to contribute rateably to the satisfaction of the debt. EUSUFF ALI HAJI *v.* PANCHANAN CHATTERJEE (1910)

15 C. W. N. 800

4. ——— *Mortgage—Sale—Purchase by mortgagee—Subsequent purchase by landlord—Mortgage-incumbrance — Mortgagee-purchaser, rights of, to fall back on mortgage—Sale under Bengal Tenancy Act—Ordinary Court-sale, its effect—Decree for rent against real tenant, effect of—Bengal Tenancy Act (VIII of 1885), ss. 164, 165 and 167* Where the mortgagee of a tenure purchased the mortgaged property in execution of a decree of his own mortgage, and the landlord subsequently purchased the same property in execution of a rent-decree but did not annul the mortgage-encumbrance: *Held*, that the mortgagee-purchaser was entitled to fall back on his mortgage as a shield against the purchase by the landlord. *Akhoy Kumar Soor* v. *Bejoy Chand Mahatap, I. L R. 29 Calc 813*, followed and the *obiter dictum* in the case discussed. *Bhawani Koer* v. *Mathura Prasad, 7 C L. J. 1*, referred to *Held*, further, that the landlord could not oust the mortgagee from the tenure without annulling the encumbrance under s. 167 of the Bengal Tenancy Act, and this would be so even if the mortgagee had not proceeded to sale before the purchase of the landlord Where the bidding for a tenure put up to auction under s. 164 of the Bengal Tenancy Act did not reach the level of the decretal amount, and a sale of the tenure subsequently followed, but without a second proclamation as contemplated by s. 165 of the same Act, the sale must be held to have been an ordinary

MORTGAGE—*contd*

9. SALE OF MORTGAGED PROPERTY —*contd.*

court-sale and the purchaser to have acquired only right, title and interest of the judgment-debtor. *Nazir Mahomed Sirkar* v *Girish Chunder Chowdhuri*, *2 C. W. N. 251*, and *Akhoy Kumar Soor* v. *Bejoy Chand Mahatap*, *I L R 29 Calc. 813*, distinguished. The special provisions for the sale of tenures under the Bengal Tenancy Act are a part of the public policy intended for the benefit of all parties concerned and the results of such sales are generally destructive of various derivative rights belonging to third parties not before the Court The provisions of the Act are therefore very stringent, and if the landlord wants the special results provided for by the Act, he must proceed strictly in accordance with its provisions Where a suit for rent has been rightly brought against the real tenant and a decree has been obtained, the decree is a good decree for rent, whether the tenant was recognised as such or not *Lalun Monee* v. *Sona Monee Dabee*, *22 W R. 334*, and *Surnomoyee* v *Denonath Gir Sunnyasee*, *I. L R. 9 Calc 908*, referred to BANBIHARI KAPUR *v* KHETRA PAL SINGH ROY (1911)

I. L. R. 38 Calc 923

5. ——— *Mortgagee failing to pay a part of consideration as provided in the mortgage-deed—Failure of consideration—Subsequent payment cannot be taken as part of mortgage-debt—Transfer of Property Act (IV of 1882), ss. 56, 81, 88—Marshalling of securities* In 1896, *G* mortgaged some lands (Serial Nos. 1—10) to *V* for R400, of which R200 were paid in cash and R200 were to be paid to *N*, a prior mortgagee. *V* having failed to pay to *N*, *G* sold to defendant No 5 some of the lands mortgaged (Serial Nos. 6—10) and other property and redeemed *N*'s mortgage by paying R200 to him Subsequently *V* paid R200 to *G*. Shortly afterwards *G* mortgaged some more lands (Serial Nos 1, 3, 4 and 5) to defendant No 4 for R400 The defendant No 4 sued on his mortgage and obtained a decree against *G*. In execution of the decree the lands, Serial Nos 1, 3, 4, 5, were sold and were purchased by defendant No 4 *V* then sued on his mortgage treating it as one for R400 to recover the amount by sale of all the ten numbers. The lower Courts recognized *V*'s mortgage only for R200, and granted him a decree authorizing him to proceed against Serial No 2 alone and if the sale-proceeds failed to satisfy his claim, to proceed against the other serial numbers which were sold to defendants Nos. 4 and 5 On appeal: *Held*, that *V* was not entitled to treat his mortgage as one for R400; since *V* having failed to pay R200 to *N* either at once or within a reasonable time there was partial failure of consideration for the mortgage and the subsequent payment of R200 to *G* by *V* could not serve in law to undo the effect of that failure, so as to prejudice the rights of defendant No 5. *Held*, further, that the Court had power, under s. 88 of the Transfer of Property Act (IV of 1882), to pass in such a suit a decree for sale, ordering that, in default of *G* paying,

MORTGAGE—*contd.*

9. SALE OF MORTGAGED PROPERTY —*concld.*

the mortgaged property or a sufficient part thereof be sold *Per Curiam* The provisions of s 56 of the Transfer of Property Act, 1882, apply only as between a seller and his buyer, not as between a mortgagee of the seller and the buyer. SUBRAYA BIN VENKATESH *v* GANPA (1911)

I. L. R. 35 Bom. 395

10. SUBROGATION.

1. ——— *Mortgage, subrogation of—Undertaking to pay subsequent incumbrance rebuts presumption of intention to keep alive prior mortgage* Where property subject to two mortgages is sold and the purchaser who undertook to pay off both the mortgages with the purchase money, discharges the prior mortgage only, he cannot, as against the subsequent mortgagee, claim to stand in the shoes of the prior mortgagee His right to use the prior mortgage as a shield is based on a presumed intention to keep alive the prior mortgage for his own benefit and such presumption is rebutted when he undertakes to discharge both the mortgages GOVINDASAMI TEVAN *v* DORASAMI PILLAI (1910) . . **I. L. R. 34 Mad. 119**

2. ——— *Subrogation—Mortgage-sale, advance of money to set aside—Mortgage in favour of lender—Sale in execution of money decree after sale set aside but before mortgage executed* Plaintiff advanced small sums of money to the mortgagor for payment to the mortgagee pending execution of a mortgage-decree, and the balance due to the mortgagee after sale in execution of the decree, with the result that the sale was set aside. One month after, the mortgagors executed a mortgage in favour of the plaintiff to secure the amounts paid by him, but during this interval a portion of the property had been sold in execution of a money-decree obtained against the mortgagor by the defendant and purchased by him. The sale was, however, not confirmed till after the plaintiff's mortgage: *Held*, that the plaintiff cannot claim to be placed in the position of the mortgagee whose dues he discharged with respect to the property purchased by defendant No. 1, which was free from encumbrances at the time he purchased it. *Shyam Lal* v. *Bashiruddin*, *I. L. R 28 All 778*, and *Vanmikalinga* v. *Chidambara*, *I. L. R 29 Mad. 37*, distinguished. The defendant No. 1's title to the property accrued on the sale and not for the first time on confirmation thereof. *Bhawani Koer* v. *Mathura Prasad*, *7 C. L J. 1*, and *Adhur Chunder* v. *Aghore Nath*, *2 C. W. N. 589*, relied on. *Prem Chand* v. *Purnima*, *I. L. R 15 Calc 546*, and *Amir Kazim* v. *Darbari Mal*, *I. L. R. 24 All. 475*, distinguished. RAM SARAN SINGH *v.* KHAKHAN SINGH (1910)

15 C W. N. 312

11. USUFRUCTUARY MORTGAGE.

——— *Civil Procedure Code (Act XIV of 1882), ss. 268, 274—Debt—Immoveable*

MORTGAGE—*contd.*

11. USUFRUCTUARY MORTGAGE—*concld.*

property—Execution of money-decree—Attachment Where a deed of mortgage with possession provided that the mortgagee was to enjoy the profits in lieu of interest for ten years and was to be redeemed on the expiration of the term by payment of the mortgage money *Held*, that the document created a purely usufructuary mortgage *Held*, further, that in the case of a usufructuary mortgage, there was no debt payable by the mortgagor to the mortgagee which could be attached in execution of a money-decree against the assignee of the mortgagee, and that s. 268 of the Civil Procedure Code (Act XIV of 1882) was not applicable to such a case. The procedure should be by attachment, under s. 274 of the Civil Procedure Code, of the interest in immoveable property and its sale according to the provisions of the Code *Tarvadi Bholanath v Bai Kashi, I. L R 26 Bom. 305*, explained MANILAL RANCHOD *v.* MOTIBHAI HEMABHAI (1911) **I. L. R. 35 Bom. 288**

12. MISCELLANEOUS CASES.

1. ——— *Whether suit is maintainable on prior mortgages without reference to subsequent mortgage over the same property—Transfer of Property Act (IV of 1882), s 85.* A person having several mortgages over the same property is entitled to bring a suit on the earlier mortgages without joining in that suit his claim under the later mortgages. *Keshavram Duluvram v. Ranchod Fakira, I L. R 30 Bom 156; Dorasami v. Venkataseshayyar, I L. R 25 Mad. 108, Bhagwan Das v. Bhawani, I. L. R. 26 All 14*, distinguished. *Natlu Krishnama Chariar v. Annangara Chariar, I. L. R. 30 Mad 353*, referred to. GOBIND PERSHAD *v.* HARIHAR CHARAN (1910) . **I. L. R. 38 Calc. 60**

2. ——— *Mortgage.* A suit brought to enforce a mortgage against a person as the legal representative of the mortgagor cannot be thrown out as improperly framed because the defendant sets up a title paramount to that of the mortgagor in the mortgaged premises. *Jogeswar Dutt v. Bhuban Mohan Mitter, I. L. R. 35 Calc 425 . s.c 3 C. L J 205*, distinguished. *Bhaja Chaudhuri v. Chuni Lal Marwari, 5 C. L. J. 95 s c. 11 C. W. N. 284*, relied on NAFAR CHANDRA KOONDOO *v.* RATAN MALA (1910) **15 C. W. N. 66**

3. ——— *Mortgage of sir land—Purchase of proprietary rights by mortgagee—Suit for redemption—Amount payable by mortgagor.* After a usufructuary mortgage of certain *sir* lands the mortgagee at an auction sale in execution of a simple money decree purchased the proprietary rights in the mortgaged property, the mortgagor becoming an ex-proprietary tenant. On a suit for redemption being brought. *Held*, that the mortgagee having himself broken up the integrity of his security, could not be permitted to cast the whole burden of the debt upon the ex-proprietary rights. *Bisheshur Dial v. Ram Sarup, I. L. R. 22 All. 284*, referred to. CHUNNI LAL *v.* SIKISHAN SINGH (1911) . . . **I. L. R. 33 All. 434**

MORTGAGE—*contd*

12. MISCELLANEOUS CASES—*contd.*

4. ——— *Civil Procedure Code (Act V of 1908), O XXXIV, r 3—Mortgage-decree nisi—Application for order absolute for foreclosure—Limitation Act (IX of 1908), Sch. I, Art. 181, if applies to applications for order absolute—Fresh application for order absolute after first application dismissed, if continuation of first application.* An application by the original holder of a mortgage-decree *nisi* passed prior to the coming into force of the new Civil Procedure Code was dismissed on being resisted by a purchaser of the decree *nisi* at an execution sale which was subsequently set aside as irregular and fraudulent at the instance of the original decree-holder who thereupon again applied for an order absolute. This application was resisted on the ground that it was barred by limitation under the new Limitation Act and the Civil Procedure Code : *Held*, that this last application should be treated as a continuation of the first application which was within time and was not thus time-barred. An application for execution of a decree may be treated as in continuation or for revival of a previous application, similar in scope and character, the consideration of which was interrupted by the intervention of objections and claims subsequently proved to be groundless or has been suspended by reason of an injunction or like obstruction. *Qamaruddin Ahmed v. Jawahir Lal, L. R 32 I A 102 · s c. 9 C. W. N 601; 1 C. L. J. 381; I L R. 27 All. 334, Rudra Narain v. Pachu Maity, I. L R 23 Calc. 437, Narayan v. Sono, I. L. R 24 Bom. 345; Rohimali Khan v Ful Chand, I. L. R 18 All 482*, referred to *Mir Ajmuddin v Mathura Das, 11 Bom. H. C. R 206*, distinguished. *Held*, further, that Sch. I, Art 181 of the Limitation Act of 1908 does not apply to applications for order absolute under O XXXIV, r. 3 of the Civil Procedure Code of 1908 MADHAB MONI DASI *v.* PAMELA LAMBERT (1910) **15 C. W N. 337**

5. ——— **Mortgage of math properties** *—Math, Mahant of, dispute between rival chellas to succeed to—Mortgage of Math properties by chellas who established will but never got possession—Compromise, chellas agreeing to manage math properties jointly —Mortgage, if valid—Onus.* On the death of the Mahant of a *math*, disputes arose between two *chellas* one of whom succeeded in establishing a will in his favour purporting to be that of the deceased Mahant but could not get possession and the other who alleged that he had been installed by the deceased as his successor, managed to obtain and keep possession of the properties of the *math*. Pending these disputes the former executed the mortgage in suit hypothecating *math* properties. Soon after there was a compromise between the claimants under which the survivor of the two was to be the Mahant and till the death of one of them neither was to take the place of the deceased but both should jointly manage the properties, and the survivor would be bound to repay loans jointly raised by the claimants. No provision was

MORTGAGE—*contd.*

12. MISCELLANEOUS CASES—*contd.*

made in the compromise regarding the discharge of the mortgage in suit: *Held*, that the mortgagee was aware that the property mortgaged was property of the *math* and that the mortgagor had not succeeded in establishing his title as Mahant and that this suit to enforce the mortgage should fail. MADHO PRASAD *v.* MAHANT RAMRATTAN GIR (1911) . . . . **15 C. W. N. 838**

6. ——— Suit upon a mortgage executed by Hindu widow and reversioner—*Investigation of mortgagor's title not permissible in mortgage suit.* In a suit upon a mortgage where it was proved that the mortgage deed had been duly executed by a Hindu widow and her reversioners it is not open to the Judge to investigate the mortgagor's title, nor is it permissible to the mortgagors to deny their title and judgment should be given for the plaintiffs with costs. GOPAL CHUNDER SHAW *v.* JADUMONEY DASSEE (1911) **15 C. W. N. 915**

7 ——— Mistake of fact in—*Knowledge of mistake by second mortgagee—Notice—Specific Relief Act (I of 1877) s. 31.* A second mortgagee who has advanced money with the knowledge of a mutual mistake of fact between the mortgagor and the first mortgagee as to the subject-matter of the first mortgage has notice of that mistake of fact and cannot plead that he has acquired his rights in good faith under s. 31, Specific Relief Act. Where a plaint alleges a mutual mistake of fact extrinsic evidence of such mistake is admissible although no rectification thereof is prayed for *Karuppa Goundan* alias *Thoppala Goundan* v *Periyathambi Goundan, I. L. R. 30 Mad. 397*, followed. MAHADEVA AIYAR *v* GOPALA AIYAR (1910) . . . . **I. L. R. 34 Mad. 51**

8. ——— Administration—*Co-mortgagees—Appointment of a mortgagee as administrator to mortgagor's estate—Extinguishment of debt—Parties—Suit by co-mortgagee's administrator against mortgagor's heirs instead of mortgagor's administrator—Improper frame of suit—Limitation—Pro formâ defendant, transfer of—Limitation Act (XV of 1877), s. 22—Mortgagee administrator's right to interest.* *A S*, the father of the two defendants, executed a mortgage bond in favour of *A J* repayable on the 16th October 1894 Subsequently *A S* executed a second mortgage in favour of *A A* and *A N* repayable on the 14th March 1896. *A J* transferred his security to *A A* and *A N*. In 1896 *A S* died leaving an infant daughter and infant son, the present defendants, as heirs. In 1897 *A N* took out letters of administration to the estate of *A S* and was still acting as administrator when the present suit was instituted. In 1897 *A A* died and *A N* took out a succession certificate to collect the debts due to his estate. In 1902 the plaintiff took out letters of administration to the estate of *A A*. On the 22nd October 1906, shortly before the expiry of 12 years from the date on which the first security was repayable, the plaintiff as administratrix brought the present suit for the recovery of R1,524 on both securities against the defendants, and joined *A N* as a *pro formâ* defendant. *A N* showed that he was always ready to join the plaintiff, and on the 20th December 1906 his name was transferred from the category of defendant to that of plaintiff. *Held*, that the appointment of one of the mortgagees as administrator to the estate of the mortgagor did not extinguish the right of action of the mortgagee other than the one who was appointed administrator and had sufficient assets to satisfy his own share of the debt. The mortgagee administrator could not, however, maintain an action. *Wankford* v. *Wankford, 1 Salkeld, 299; In re Carew, 4 Ir. Ch. Rep 112; Hanhar Pershad* v. *Bholi Pershad, 6 C. L. J. 383; Matson* v. *Dennis, 4 DeG. J. & S. 345; Vickers* v. *Cowell, 1 Beav. 529; Smith* v. *Sibthorpe, 34 Ch D. 732; Powell* v. *Brodhurst, [1910] 2 Ch. 160, Steeds* v. *Steeds, 22 Q. B. D. 537; Morley* v. *Bird, 3 Ves. 629; Sitaram* v. *Shridhar, I. L. R. 26 Bom. 292; Tamman Singh* v. *Lachhmin Kunwari, I. L. R. 26 All. 318*, followed. *Binns* v. *Nichols, L. R 2 Eq 256; Dexter* v. *Arnold, 3 Mason 284, Lowe* v. *Peskett, 16 C B. 500, Barber Maran* v. *Ramana Goundan, I. L. R. 20 Mad. 461*, distinguished. *Richard* v. *Molony, 2 Ir. Ch. Rep 1*, and *Wallace* v. *Kelsall, 7 M. & W. 264*, dissented from. *Held*, also, that the appointment of *A N* as administrator vested in him the estate of *A S* under s. 4 of the Probate and Administration Act, 1881, and the suit should therefore have been brought against him and not against the heirs. *Clegg* v. *Rowland, L R. 3 Eq. 368; Beresford* v. *Ramasubba, I L. R. 13 Mad. 197, Francis* v. *Harrison, 43 Ch. D. 183; Morley* v. *Morley, 25 Beav. 253*, distinguished. *Jaggeswar Dutt* v. *Bhuban Mohan Mittra, I. L. R. 33 Calc. 425*, referred to. The transfer of a party from *pro formâ* defendant to plaintiff is not an addition of a new party within the meaning of s. 22 of the Limitation Act. *Nagendrabala Debya* v *Tarapada Acharjee, 8 C L J. 286; Khadir Moideen* v. *Rama Naik, I. L. R. 17 Mad 12*, followed. *Abdul Rahaman* v. *Amir Ali, I. L. R. 34 Calc. 612*, distinguished. *Pyari Mohun Bose* v. *Kedarnath Roy, I. L. R. 26 Calc. 409*, referred to. No interest should be allowed to a mortgagee administrator from the date when sufficient assets became available to him for repayment of the mortgage money. *Robinson* v. *Cumming, 2 Atk. 409, Page* v. *Lloyd, 5 Peters 304*, and *Adams* v *Gale, 2 Atk. 106*, referred to. HOSSAINARA BEGAM v. RAHIMANNESSA BEGAM (1910) . . . **I. L. R. 38 Calc. 342**

MORTGAGE DECREE.

See EQUITABLE MORTGAGE.
I. L. R. 38 Calc. 824

MORTGAGED PROPERTY.

——— sale of—

See MORTGAGE . **I. L. R. 38 Calc. 913**

MORTGAGEE.

See CIVIL PROCEDURE CODES, 1882, s. 317; 1908, s 66.
I. L. R. 35 Bom. 342

——— prior and subsequent—

See CIVIL PROCEDURE CODE, 1882, s 317.
I. L. R. 33 All 382

See MORTGAGE
I. L. R. 33 All. 368; 370

——— purchase by—

See MORTGAGE . **I. L. R. 38 Calc. 923**

——— suit for possession by—

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)
I. L. R. 35 Bom. 204

MOTOR CAR.

——— Liability of owner for the acts of his driver in contravention of the rules framed under the Act—*Bengal Motor and Cycle Act (III of 1903), ss 3 and 4—Use of motor car with permission of the owner to convey his friends in his absence—Rules 4, 20.* The owner of a motor car who expressly or impliedly permits his car to be used or driven by his servant is, if it is so used or driven as to contravene rule 20 of the rules framed under the Bengal Motor Car and Cycle Act (III of 1903), himself liable therefor under Rule 4 and s. 4 of the Act, though he was not in the car at the time and had given his servant general directions to observe the regulation speed, unless the latter has used it improperly for his own purposes. *Somerset* v. *Wade, [1894] 1 Q B. 574, Somerset* v. *Hart, 12 Q. B. D. 360, Collman* v. *Mills, 66 L J. Q B. 170,* and *Commissioner of Police* v. *Cartman, [1896] 1 Q. B. 655,* referred to THORNTON *v.* EMPEROR (1911) . . **I. L. R. 38 Calc. 415**

MUKHTEAR.

See LEGAL PRACTITIONERS' ACT, S. 14.
15 C. W. N. 269

1. ——— Application for re-instatement after a lapse of years—*Dismissal from the roll on conviction of an offence implying moral turpitude—Deliberate omission to disclose the facts of enhancement of sentence and of an order directing his prosecution for making a false affidavit—Power of the High Court to re-instate a legal practitioner after disbarment—Grounds of re-instatement.* The High Court has power, when a legal practitioner has been dismissed for misconduct of any description, in the widest sense of the term, to re-admit him after a lapse of time, if he satisfies the Court that he has in the interval conducted himself honourably, and that no objection remains as to his character and capacity. *King* v. *Greenwood, 1 W. Black. 222, Anonymous Case, 17 Beav. 475; In re Smith,* unreported, cited in 17 Beav. 477; *In re Robins, 34 L. J. Q. B 121, In re Pyke, 1 New Pract. Ca. 330; In re Pyke, 6 B. & S. 703: 40 L. J. Q. B 121; In re Pyke, 34 L. J.*

MUKHTEAR—*concld.*

Q B 220 · 6 B & S. 707; In re Brandreth, 60 L. J. Q. B. 501; In re Barber, 19 Beav 378, followed. *Ex parte Frost, 1 Chitty 558 note, In re Hawdane, 9 Dowl Pr Ca. 970; In re Garbett, 18 C. B. 403; In re Poole, L. R. 4 C P 350; In re Abinash Chandra Moitra, I. L. R 37 Calc 173; In re Chanda Singh, 11 C. L. J. 438 · 14 C W N. 521,* and *Smith* v. *Justices of Sierra Leone, 7 Moo. P C. 174,* referred to *In re Lamb, 23 Q B. D. 477,* distinguished Where a mukhtear was struck of the roll on conviction of kidnapping a minor girl, under s 363 of the Penal Code, under circumstances of an aggravated character, implying moral turpitude, and applied after seven years for re-instatement, but deliberately omitted to disclose the facts that the High Court had enhanced his sentence and had also directed his prosecution under s 193 of the Penal Code for making a false affidavit in the course of a proceeding in revision, the application for re-instatement was rejected. *In re* ABIRUDDIN AHMED (1910)
I. L R. 38 Calc. 309
s.c. 15 C. W. N. 357

2. ——— Authority to practise in the Courts of Magistrates and Sessions Judges —*Limitation of authority—Necessity of permission of the Court in each particular case—Grounds of permission—Criminal Procedure Code (Act V of 1898), ss. 4 (r), 340—Practice.* Under ss. 4 (*r*) and 340 of the Criminal Procedure Code, a mukhtear is, subject to the permission of the Court in each particular case, authorised to practise both before Magistrates and Sessions Judges. There is no general rule that mukhtears should be allowed to appear in every case in the Courts of Magistrates, and that they should not be permitted to appear in any case in the Courts of Session The Magistrate and the Judge must decide in each case whether he will permit a mukhtear to appear. Though it is not desirable that mukhtears should be permitted to appear in Sessions Courts where their appearance is unnecessary, or where there is no reason for their appearance, the question is one which must be decided independently in each case, and no general rule can be laid down It depends largely on whether the accused is in a position to employ a vakil or pleader and whether he elects to do so. But the defence of an accused should not be shut out merely by the fact that he is represented by a mukhtear. ISHAN CHANDRA BHUTT *v* EMPEROR (1911)
I. L. R. 38 Calc. 488

MULGENI TENURE.

See LANDLORD AND TENANT.
I. L. R. 34 Mad. 231

MUNICIPAL BOARD.

——— suit against member of—

See UNITED PROVINCES MUNICIPALITIES ACT, 1900, s. 49.
I. L. R. 33 All. 540

MUNICIPAL ELECTION.

——— *Bengal Municipal Act (III of 1884), ss. 6, 15, 103 and 105—Voter, qualification of—Illegal levy of Income-tax and payment of Municipal rate, effect of—"Owner" meaning of—Property acquired by father with contribution from son.* A person whose income is below the taxable minimum, but who submits to the levy of the tax, does not thereby acquire the statutory qualification contemplated by s. 15 of the Bengal Municipal Act Similarly a person who is not legally liable to pay Municipal rate but pays it, does not become entitled to become a voter by the mere fact of such payment, unless it is proved to have been made by him as a person legally liable to satisfy the Municipal demand An "owner" for the purposes of the Municipal Act includes not only an owner in the actual occupation of the holding but also an owner entitled to receive rent from the occupier or otherwise It also includes a manager, or agent, or a trustee for any such person. Where a house was purchased in the name of the father, and the major portion of the consideration money was paid by the son out of joint funds belonging to himself and his brothers, and further the expenditure on subsequent extensive alterations and additions were similarly defrayed by the son out of the said funds, and the son was occupying the house while the father was living abroad: *Held*, that the son having a substantial interest in the property should be treated as owner in the ordinary acceptation of that term, and he being the manager or agent of the father could also be treated, as owner, and he was therefore liable under s 103 of the Municipal Act to pay the rates assessed on the holding. *Held*, further, that where the son being in possession of the house paid the municipal demands with his own money, it could not be said that such a payment was made by a person neither liable nor competent to make it under the provisions of the law; he being an occupier was as such liable to pay the rates under s. 105 of the Bengal Municipal Act. NARENDRA NATH SINHA *v* NAGENDRA NATH BISWAS (1911) . **I. L. R. 38 Calc. 501**

MUNICIPALITY.

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 3 (7), 96.
I. L. R. 35 Bom. 412

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 50, 54.
I. L. R. 35 Bom. 492

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), S. 96 **I. L. R. 35 Bom. 236**

MUSHAA.

See MAHOMEDAN LAW—GIFT.
I. L. R. 38 Calc 518
15 C. W. N. 328

MUTATION PROCEEDINGS.

See FALSE EVIDENCE.
I. L. R. 38 Calc. 368

N

NARVA TENURE.

——— mortgage of—

See BHAGDARI AND NARVADARI ACT (BOM V OF 1862), S. 3
I. L. R. 35 Bom. 42

NAZARANA.

See MORTGAGE . **I. L. R. 35 Bom. 371**

NAZIR.

——— appointment of, as guardian—

See GUARDIAN . **I. L. R. 38 Calc. 783**

NEGLIGENCE.

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS 50, 54.
I. L. R. 35 Bom. 492

See VENDOR AND PURCHASER.
I. L. R. 35 Bom. 269

——— indemnity against—

See COMMON CARRIER, LIABILITIES OF.
I. L. R. 38 Calc. 28

——— Suit against Tramway Company *—Passenger entering car while in motion—Contributory negligence.* *T* brought an action against the Tramway Company claiming damages for injuries sustained by him by reason of the Company's negligence. *T* alleged that while attempting to board a stationary tramcar the car was suddenly started at a signal given by the conductor and the footboard tilted and slipped sideways from beneath *T*'s foot, in consequence of which *T* lost his balance, was thrown to the ground and his right foot was injured. *Held*, dismissing the suit, that the footboard was not loose and that *T*'s fall was due to his attempting to enter a car while in motion and was not due to any fault or defect in the fixity of the board. *Per Curiam*.—Whether there is a bye-law or there is not a bye-law to that effect, the fact remains that if a passenger chooses to attempt to enter or leave a moving car, he does so at his own risk. It is not what a prudent or a reasonable man should or would do, and if he does it and sustains injury while in the act of so doing, it would be an accident or a misfortune for which the defendant Company would in no way be liable. TEMULJI JAMSETJI *v.* BOMBAY ELECTRIC SUPPLY AND TRAMWAYS COMPANY, LTD. (1911) . . . **I. L. R. 35 Bom. 478**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——— s. 98—Want of notice of dishonour—*Whether damage caused by reason of such want of notice—Burden of proof* In a suit by intermediate endorsers of a *hundi* against earlier endorsers, the court found that the *hundi* had not been presented for payment within a reasonable time and that notice of dishonour was not given. *Held*, that it lay upon the plaintiffs to prove that

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*concld.*

———— s 98—*concld.*

the defendants could not suffer damage by reason of want of notice of dishonour, not upon the defendants to prove that they had suffered damages *Moti Lal* v. *Moti Lal, I. L R 6 All 78*, followed. MADHO RAM *v.* DURGA PRASAD I. L. R. 33 All. 4

NEW TRIAL.

See PRESIDENCY SMALL CAUSE COURT. I. L R. 38 Calc. 425

NEWSPAPER COMMENT.

———— on party under cross-examination—

See CONTEMPT OF COURT 15 C. W. N 771

NEWSPAPERS (INCITEMENT TO OFFENCES) ACT (VII OF 1908).

———— ss 2 (1) (*b*) 3.

See PRINTING PRESS, FORFEITURE OF. I. L. R. 38 Calc. 202

NON-JOINDER.

See PARTIES . I. L. R. 33 All. 272

NORTH-WESTERN PROVINCES AND OUDH ACTS.

See OUDH ACTS.

See UNITED PROVINCES ACT.

———— 1869—I.

See OUDH ESTATES ACT

———— 1899—III.

COURT OF WARDS ACT.

———— 1900—I.

See UNITED PROVINCES MUNICIPALITIES ACT.

———— 1901—II.

See AGRA TENANCY ACT.

———— ————III.

See UNITED PROVINCES LAND REVENUE ACT.

———— 1903—I.

BUNDELKHAND ENCUMBERED ESTATES ACT.

NOTICE.

See EXECUTION OF DECREE. I. L. R. 38 Calc. 482

See RAILWAYS ACT (IX OF 1890), S. 77. I. L. R. 33 All. 544

See SECRETARY OF STATE FOR INDIA. I. L. R. 35 Bom. 362

NOTICE—*concld.*

See TRANSFER OF PROPERTY ACT, SS 3, 41 I. L. R. 35 Bom. 342

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), S 49 I. L. R. 33 All. 540

NOTICE OF LOSS.

See COMMON CARRIERS. I. L R. 38 Calc. 50

NOTICE OF SUIT.

See SECRETARY OF STATE FOR INDIA. I. L R. 38 Calc. 797

NOTICE TO QUIT.

See LANDLORD AND TENANT. I. L. R. 38 Calc. 432

NUISANCE.

See CALCUTTA MUNICIPAL ACT, SS 3, 632. 15 C. W. N. 100; 316

See PENAL CODE, SS. 114, 283. I. L. R. 35 Bom. 368

———— Public and private nuisance—*Erection of a high wall on one's own land very close to another's dwelling house—Likelihood of injury to the health of the inmates of the adjoining tenements and of the public inhabiting the neighbourhood by the propagation of disease—Propriety of order of partial demolition—Feasibility of other remedial measures—Calcutta Municipal Act (Ben. III of 1899), s. 632.* The words "any nuisance" in s. 632 of the Calcutta Municipal Act mean any nuisance as defined in s. 3 (*29*) thereof. The definition, though wider than that of a "public nuisance" at the common law, does not extend to the inclusion of all private nuisances. *Bhagwan Das* v. *Rash Behari Mullick, 14 C. W. N. 637*, explained. The erection of a wall, however high, on one's own land very close to the dwelling-house of a neighbour, in order to prevent him from acquiring a right of easement, is not in itself a nuisance under the Calcutta Municipal Act, but where the evidence shows that it is, or is likely to be, injurious to the health of the residents of the adjoining tenements and of the public inhabiting the neighbourhood, by propagating the seeds of consumption and typhoid, it becomes a nuisance under the Act. Where, however, the only matter which causes a wall to be a nuisance is not its height but the accumulation of filth at the bottom and want of space to clear the drainage between it and the adjacent house, the Magistrate, instead of ordering its reduction in height, should consider whether the nuisance cannot be abated by the adoption of other remedial measures The use of the Act for the purpose of interfering in any way with the rights of private ownership, beyond the limited powers given to the Corporation by it for the necessary protection of the public and the enforcement of proper sanitation, is much to be deprecated. KHAGENDRA NATH MITTER *v.* BHUPENDRA NARAIN DUTT (1910) I. L. R. 38 Calc. 269

O

OBJECTION.

See ATTACHMENT BEFORE JUDGMENT.
I. L. R. 38 Calc. 448

OBSTRUCTION.

See PENAL CODE, SS 114, 283.
I. L. R. 35 Bom. 368

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (II OF 1901). S. 20(2) . . I. L. R. 33 All. 136

See AGRA TENANCY ACT (II OF 1901), S 21 . . I. L. R. 33 All. 779

See RIGHT OF OCCUPANCY.

1. ——————— *Non-transferability, question of, if may ber aised by assignee of holding pending mortgage suit—Consent of landlord obtained subsequently to filing written statement.* A purchaser of an occupancy-holding from the raiyat after a decree for sale has been passed in favour of a mortgagee of the holding but before sale thereof is bound by the sale both because a mortgagor and consequently an assignee from him cannot be allowed to deny the mortgagee's title and also by reason of the operation of the rule of *lis pendens*. The rule of *lis pendens* is applicable to proceedings to realise the mortgage after the decree for sale. The purchaser cannot be allowed to raise the question of non-transferability of the holding when in his written statement he stated that his purchase had not been recognised by the landlord, by showing that such recognition on the part of the landlord, has been subsequently obtained. An occupancy raiyat is estopped from setting up, as between himself and a mortgagee of the holding, the invalidity of the mortgage. SHAYAMA CHARAN BHATTACHARYA *v.* MOKHUDA SUNDARI DEBI (1911) 15 C. W. N. 703

2. ——————— *Occupancy holding—Transferability, usage of, how established—Usage should be grown-up and not growing—Usage after it has grown up may apply to pre-existing tenancies—Bengal Tenancy Act (VIII of 1885), s. 50—Presumption if applies to suit to eject transferee of holding—Misconstruction of written evidence—Second appeal—Civil Procedure Code (Act V of 1908), s. 100* In order to prove a custom or usage of transferability of occupancy holdings, what is necessary to prove is that such transfers have been made to the knowledge and without the consent of the landlord and that they have been recognised by him either without the payment of *nazar* or upon payment of a *nazar*, also fixed by custom. It is not necessary to prove that the landlord has actually made an objection to a transfer and has been unsuccessful. The usage to be effective must not be a growing usage but one which has already grown up. A usage of transferability, after it has grown up, affects not merely tenancies created thereafter but also existing tenancies. S. 50 of the Bengal Tenancy Act has no application in a suit for ejectment by the landlord on the allegation

OCCUPANCY HOLDING—*concld*

that the tenant of a non-transferable holding has sold it to the defendant and has abandoned the land, as such a suit is obviously not a suit or proceeding under the Bengal Tenancy Act But even in cases where the section is not directly applicable. the Court may act on a similar presumption, if the facts justify the necessary inference Although the misconstruction of a document which is the foundation of the suit or which is in the nature of a contract or a document of title is a ground for second appeal, such appeal does not lie because some portion of the evidence is in writing and the Judge in the Court below makes a mistake as to the meaning of it. BUZLUL KARIM *v* SATIS CHANDRA GIRI (1911) . . . 15 C. W. N. 752

OCCUPANCY TENANT.

See LANDLORD AND TENANT.
I. L. R. 33 All. 335

OFFENDING MATTER.

——————— proof of—

See PRINTING PRESS, FORFEITURE OF
I. L. R. 38 Calc. 202

OFFERINGS TO DEITY.

——————— *Dispute concerning the possession of a temple and its offerings—Offerings not "profits" arising out of a temple—Jurisdiction of Magistrate—Apportionment of the offerings—Criminal Procedure Code (Act V of 1898), s. 145.* S 145 of the Criminal Procedure Code includes with in its scope a dispute concerning the actual possession of a temple and the land on which it stands, but not one relating to the right to, and apportionment of, the offerings given by the worshippers. Such offerings are not "*profits*" arising out of the temple within the meaning of s 145 (2). An order made under s 145 declaring a party entitled to the actual possession of a temple, and its offerings is, therefore, *intra vires* as to the temple, but not as to the offerings *Gunam Ghosal* v. *Lal Behari Das, I. L. R. 37 Calc. 578*, referred to. RAM SARAN PATHAK *v* RAGHU NANDAN GIR (1911)
I. L. R. 38 Calc. 387

OFFICIAL ASSIGNEE.

See PRESIDENCY TOWNS INSOLVENCY ACT, 1909, SS 7, 86
I. L. R. 35 Bom. 473

OFFICIAL TRUSTEE.

——————— *Probate—Official Trustee's Act (XVII of 1864), ss. 3, 10, 32.* The official Trustee as constituted by Act XVII of 1864 is not entitled by virtue of his office and in his character as Official Trustee and in the name of Official Trustee to obtain a grant of probate. *Ashbury Railway Carriage and Iron Co.* v. *Riche, L. R. 7 H L. 653*, referred to. GREY *v* CHARUSILA DASI (1910)
I. L. R. 38 Calc. 53

OFFICIAL TRUSTEE'S ACT (XVII OF 1864).

——— ss. 8, 10, 32.

See OFFICIAL TRUSTEE.
I. L. R. 38 Calc. 53

ONUS OF PROOF.

See BURDEN OF PROOF.

OPIUM ACT (I OF 1878).

——— s. 11—*Boat, unlawful user by hirer—Confiscation, without hearing owner* An order of the Magistrate confiscating a boat under s 11 of the Opium Act was set aside when such order was passed without giving the owner of the boat an opportunity of being heard S 11 of the Opium Act does not seem to contemplate that every receptacle in the nature of a ship or a house or a carriage in which a small quantity of opium may happen to be found is liable to confiscation; the liability arises from the owner of such conveyance using the conveyance for the purpose of transporting opium. ABDUL RAHAMAN *v.* EMPEROR (1910)
15 C. W. N 296

ORDER ABSOLUTE.

See MORTGAGE . 15 C W. N. 337

OUDH ESTATES ACT (I OF 1869).

——— s. 6.

See TALUQDAR . I. L. R. 33 All. 125

——— *United Provinces Municipalities Act (1 of 1900), ss 87 (5), 147, 152—Municipal Board—Order for demolition of building—Order ultra vires—Revision—Jurisdiction. Held,* (1) that s. 152 of the Municipalities Act, 1900, does not apply where the prohibition, notice or order issued by the Board is *ultra vires*; and (11) that s. 87 (*5*) of the Act applies only to buildings of the kind referred to in the preceding sub-sections, that is, new buildings in respect of which notice should have been given under sub-s (*1*). *Alopi Din* v *The Municipal Board of Allahabad, All. Weekly Notes (1907) 2,* and *Hyam* v *The Calcutta Corporation, 10 C. W N 1904,* referred to. EMPEROR *v* RAM DAYAL (1910)
I. L. R. 33 All. 147

P

PARTIES.

See HINDU LAW—JOINT FAMILY
I. L R 33 All. 71

See MORTGAGE . I. L. R 38 Calc. 342

——— acts and conduct of—

See EVIDENCE, ADMISSIBILITY OF.
I. L. R. 38 Calc. 892

——— addition of—

See MORTGAGE I L. R. 38 Calc. 913

——— consent of, to jurisdiction—

See EVIDENCE ACT (I OF 1872), s. 58.
I. L. R. 35 Bom. 24

PARTIES—*contd.*

——— joinder of—

See CIVIL PROCEDURE CODE, 1882, s. 539
I L. R 35 Bom. 470

See CIVIL PROCEDURE CODE, 1908, O I, R. 10 . I. L. R. 35 Bom. 393

——— witnesses if—

See CRIMINAL PROCEDURE CODE, s 195.
15 C W. N. 565

1. ——— *Civil Procedure Code (Act V of 1908), O XXIII, r. 1—Suit allowed to be withdrawn, with liberty to bring fresh suit on payment of defendant's costs, added plaintiffs if bound by order—Deposit of costs after institution but before trial of fresh suit if valid* Where the Judge having held that the plaintiff who was a member of a joint Hindu family should have joined the other members also as co-plaintiffs, the plaintiff asked for and was allowed leave to withdraw from the suit with liberty to bring a fresh suit, "subject to limitation and on condition that he must pay or deposit the defendant's costs before bringing a fresh suit or else the suit shall stand dismissed with costs," and the co-parceners together instituted a fresh suit but did not deposit the defendant's costs till some time afterwards: *Held,* that the suit was not liable to be dismissed so far at any rate as the added plaintiffs were concerned. That as regards the original plaintiff the suit should have been treated as instituted on the date on which the costs were deposited That the deposit of the costs before the trial of the suit was sufficient compliance with the order in this case *Abdul Aziz* v *Ebrahim, I. L. R. 31 Calc. 965,* followed *Harenath* v. *Syed Hossein, 10 C. W N. 8,* distinguished. GOPI LAL *v* LALA NAGGU LAL (1911) . . 15 C. W. N. 998

2. ——— *Parties to suits—Joint Hindu family—Managing members—Suit to recover debt due to members of family in family business—Power of managers to sue alone—Limitation Act (XV of 1877), s. 22—Parties added after expiry of period of limitation* Where a joint family business has to be carried on in the interests of the joint family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts, and compromising or discharging claims ordinarily incidental to the business; and where they are so entrusted and empowered they are entitled as the sole managers of the family business to make in their own names contracts in the course of that business, and to maintain suits brought to enforce those contracts without joining in the suit with them either as plaintiffs or defendants the other members of the family. *Arunachala Pillai* v. *Vythialinga Mudaliyar, I. L R 6 Mad. 27,* approved *K P. Kanna Pisharody* v *V. M Narayanan Samayagipad, I. L R. 3 Mad 234; Ramsebuk* v. *Ramlall Koondoo, I. L R 6 Calc. 815, Imam-ud-din* v. *Liladhar, I L R 14 All. 524,* and *Alagappa Chetti* v. *Vellian Chetti, I L. R 18 Mad. 33,* distinguished. In this case the original plaintiffs were the managing members of a joint family business of money-lend-

PARTIES—*concld.*

ing, entrusted with and regularly exercising the power of doing everything necessary to carry on the business In the course of such business they contracted in their own names with the defendants for a loan, and on the accounts a balance was struck between the parties on the 9th August 1901. In a suit brought by the managing members on the 3rd June 1904, and therefore within the period of limitation, to recover the amount due, the other members of the family were, on an objection by the defendants that the suit was improperly constituted, joined as plaintiffs on the 22nd August 1904, after the period of limitation for the suit had expired, and the defence was set up that under s 22 of the Limitation Act (XV of 1877) the whole suit was barred *Held* (reversing the decision of the High Court), that the suit as originally brought was properly constituted; that the members of the family subsequently added were unnecessary parties; and that the suit was consequently not barred. KISHAN PRASAD *v* HAR NARAIN SINGH (1911) . . . I. L. R. 33 All. 272

PARTITION.

See COMMISSIONER'S FEES
15 C W. N. 221

See EVIDENCE ACT (I OF 1872), S 44.
I. L. R. 33 All. 143

See HINDU LAW—PARTITION
I. L. R 33 All. 118
I. L. R. 34 Mad 269
I L. R. 35 Bom. 293

See HINDU LAW—WIDOW.
I. L. R. 33 All. 443

See MORTGAGE . I. L. R 35 Bom 371

See PRE-EMPTION . I. L. R. 33 All. 28

See UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 233 (*k*).
I. L. R. 33 All 169; 440

——— - suit for—

See HUSBAND AND WIFE.
I L. R. 38 Calc. 629

1. ——— **Procedure**—*Partition, suit for —Amendment of plaint by order of Court altering nature of suit—Acquiescence by plaintiff—Appeal, in disregard of amendment of plaint, not barred* It is incumbent on the Court, in a suit for partition, to come to a clear and definite finding that the plaintiff had title to the property before proceeding further into the case, and a Judge on appeal should also observe the same procedure. *Bidhata Rai* v *Ram Charitar Rai, 12 C W. N. 37*, referred to. If the Judge, on appeal, finds the question of title to the property in favour of the plaintiff, any finding on the question of possession does not debar the Judge from affirming the preliminary decree for partition passed by the first Court and does not justify him in remanding the case to the lower Court for retrial. At the hearing of the appeal, the Judge held that the plaint should be amended and the plaint was

PARTITION—*contd*

accordingly amended with the acquiescence of the plaintiff, so as to alter the nature of the suit. A fresh written statement was filed by the defendant and fresh issues were framed These facts did not preclude the plaintiff from filing an appeal, within the time allowed by limitation, if, on reflection, he thought that the action taken by him in amending the plaint was injudicious. SHASHI BHUSHAN BEED *v.* JOTINDRA NATH ROY CHOWDHRY (1911)
I. L. R. 38 Calc. 681

2. ——— **Partition, suit for, amongst Mahomedan co-owners**—*Suit for partial partition—Partition of moveables only asked leaving immoveables ijmali—Suit if lies* Where a Mahomedan instituted a suit against his brothers and mother for partition only of the moveables held by the parties in *ijmali* but it appeared that the parties had *ijmali* immoveable properties also: —*Held*, that there is no distinction in principle between partition of joint property under Hindu and under Mahomedan law. That it was inexpedient to allow a suit for partition of a portion only of the joint properties Plaintiff was given an opportunity to amend the plaint so as to make the suit one for partition of the whole of the joint properties. FUZLUR RAHMAN CHOWDHURY *v* MAHOMED FAYZUR RAHMAN CHOUDRY (1911)
15 C. W. N. 677

3. ——— **Agreement for partial partition if specifically enforcible**—*Registration Act (III of 1877), s. 17 (b) and (h)—Partition deed, unregistered, affecting portion of property—Admissibility—Part performance, equitable doctrine of, if applies, where partition acted upon and improvements effected—Previous oral agreement if may be proved—Evidence Act (I of 1872), s 91—Equities in favour of co-sharer who has effected improvements, how given effect—Commissioner of partition—Delegation of judicial power to.* A partition deed in respect of property of the value of R100 or upwards, is compulsorily registrable whether it be treated as a deed by which a partition was effected or as a deed which declared a partition previously effected by the parties. Cls. (*b*) and (*h*) of s. 17 of the Registration Act (III of 1877) may be reconciled if it be held that a document though not admissible as creating an interest in land is receivable in evidence for a collateral purpose, namely, for the specific performance of the agreement. Where, however, the defendant in a suit for partition sought to use an unregistered partition deed not for a collateral purpose but to prove that the property covered thereby had ceased to be joint property, the document was inadmissible under s. 49 of the Registration Act. Other evidence in support of the transaction was excluded by s. 92 of the Evidence Act because the written instrument was not collateral to but of the very essence of the transaction. Where under an arrangement which was embodied in an unregistered partition deed, the parties continued for many years in separate possession of portions of the joint property and the defendant during this time spent money in repairs on the portion allotted to him:

PARTITION—*contd.*

Held, that assuming that the partition deed was preceded by an oral agreement for partial partition, it was not specifically enforcible by suit. That, for this reason, and also because the equities arising in favour of the party who made the improvement could be given effect to in the partition decree so that he might not suffer by reason of the agreement having been acted upon or the other party take advantage of the improvements made by him, the equitable doctrine of part performance had no application to the case Although there may be a partial partition of joint property by private arrangement, there cannot be a partial partition by suit. Although a co-tenant, who has spent money in improvement of the joint property, may not be entitled to call upon his co-sharers to compensate him for the expenditure, yet he has a defensive equity which is enforcible in the event of a partition. It is in recognition of such equitable right that to the co-owner who has made the improvements is assigned that portion of the property on which the improvements have been made, the division being made on the basis of the unimproved value. The determination of the question whether certain properties are the joint properties of the parties or the exclusive properties of any of them cannot be delegated by the Judge to the Commissioner for partition. UPENDRA NATH BANERJEE *v* UMESH CHANDRA BANERJEE (1910) **15 C. W. N. 375**

4. ———— **Property not capable of division**—*Partition Act (IV of 1893)—Plaintiff, if may sue for sale of share by defendant at a valuation—All shareholders to bid for property* When the nature of the property jointly owned by the plaintiff and the defendant is such that a division of it amongst them cannot reasonably or conveniently be made the plaintiff has not the right to claim that the defendant should be compelled to transfer his share to the plaintiff at a valuation, merely because he happened to have possession of the property at the commencement of the action The proper course is to direct a sale of the property amongst the co-sharers, and it should be given to that shareholder who offers to pay the highest price above the valuation made by the Court *Williams* v *Games, L. R 10 Ch. App. 204*, and *Pitt* v. *Jones, 5 App. Cas 651*, followed *Basunta Kumar Ghose* v. *Moti Lal Ghose, 15 C W. N. 555n*, distinguished DEBENDRA NATH BHATTACHARJEE *v.* HARI DAS BHATTACHARJEE (1910) **15 C W. N. 552**

5. ———— *Partition Act (IV of 1893)—Plot built on by co-sharer not covenant for division—Partition of tank—Court's discretion to refuse partition and to allow the party in possession to buy the other party out—Equity.* The defendants in a suit for partition had built a dwelling-house on a plot of 7 cottahs of land without opposition from the plaintiff who was a stranger and owned only a $\frac{1}{10}$th share in it and in an adjoining plot of 1 bigha 6 cottahs. The lower Appellate Court finding that it would be very inconvenient for all parties concerned if these plots were divided by metes and bounds allowed the defendants to buy up the plaintiff's shares at a proper valuation: *Held*, that whether s 4 of Act IV of 1893 applied to the case or not it is a well-known principle of equity which must be adopted in all partition cases that when it is inconvenient to divide a property that property must be left in the possession of the person in occupation and the other person who cannot conveniently get actual possession, compensated A tank covering one bigha in which plaintiff owned a $\frac{1}{10}$th share was left joint the lower Appellate Court holding that it was not convenient to divide it. The High Court affirmed that decision. BASUNTA KUMAR GHOSH *v.* MOTI LAL GHOSH (1907) **15 C. W. N. 555n**

6. ———— **Private partition**—*Estates Partition Act (Beng. V of 1897), s 99—Private partition amongst proprietors—"Tenancy in common," cessation of—Putnidar of separated share, if bound by subsequent butwara by Collector.* S. 99 of the Estates Partition Act (Beng. V of 1897) does not apply when the estate partitioned by the Collector had already been privately partitioned amongst the proprietors and the proprietors were holding their shares of the lands in severalty and not in common tenancy as contemplated in that section. A *putnidar* in possession of a separately allotted portion of such estate is not therefore affected by the subsequent partition by the Collector. *Hridoy Nath Saha* v. *Mohabatannessa Bibee, I. L. R. 20 Calc. 285*, applied. The fact that the Government was not bound to recognise the private partition for purposes of revenue does not affect the question. ABDUL LATIF MIAH *v.* AMANUDDI PATWARI (1911) **15 C. W. N. 426**

7. ———— **Appeal**—*Appeal against preliminary decree—Final decree passed since the appeal—No appeal against final decree. Held*, that an appeal against the preliminary decree in a suit for partition cannot be heard if after the filing of such appeal the final decree has been passed and no appeal is preferred against that decree. *Kuriya Mal* v. *Bishambar Das, I. L. R. 32 All. 225*, referred to. NARAIN DAS *v.* BALGOBIND (1911) **I. L. R. 33 All. 528**

8. ———— **Partition suit, abatement of**—*Civil Procedure Code (Act V of 1908), O. I, r. 10—Limitation (Act IX of 1908), Art. 111—Death of a party—Abatement—Application to set aside the abatement—Limitation of sixty days—In a partition suit all parties should be before the Court—Inherent power of the Court to add a party at any stage of the suit for the ends of justice.* On the 5th April 1892 the plaintiff obtained a decree for partition and died in October 1893, leaving him surviving a minor son, who attained majority in February 1907. At a very late stage of the execution-proceedings, the son made an application on the 16th April 1910 for the issue of a commission to effect partition according to the rights declared in the partition decree. *Held*, that as soon as the Civil Procedure Code (Act V of

PARTITION—*concld.*

1908) came into force the suit abated so far as regarded the applicant's father who was a party, and the application to set aside the abatement by adding the applicant as the legal representative of the deceased not having been made within sixty days under Art 171 of the Limitation Act (IX of 1908), the application was time-barred. *Held*, further, that in a partition suit all the parties should be before the Court, and that there was nothing in the Civil Procedure Code (Act V of 1908) limiting or affecting the inherent power of the Court to make such orders as might be necessary for the ends of justice. LAKHMICHAND REWACHAND *v.* KACHUBHAI GULABCHAND (1911)

I L R. 35 Bom. 393

9. ——— **"Instruments of partition," meaning of**—*Undivided brothers—Instruments whereby co-owners divide property in severalty—Release—Partition—Stamp.* Instruments whereby co-owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother, the manager of the family, as his share in the family property, moveable and immoveable, a certain cash and bonds for debts due to the family and passed to the eldest brother a document in the form of a release Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty, the said two documents were to be treated as releases or instruments of partition. *Held*, that the documents were instruments of partition. *In re* GOVIND PANDURANG KAMAT (1910)

I. L. R. 35 Bom. 75

PARTITION ACT (BENG. VIII OF 1876).

——— **ss. 111, 149**—*Decision of title in proceedings under, if bars civil suit—Miras tenure, circumstances proving—Permanent structures, if proof of permanency of tenure.* S 111, excep. 3, of the Estates Partition Act, applies only to permanent tenures the existence of which is admitted by the tenure-holders and has no application where this is denied by any of them. S. 149 of the Estates Partition Act does not bar a separate suit for the establishment of a *miras* title found against by the revenue officer even though the *mirasdar* happens to be a part proprietor. The object of s. 149 is only to exclude the jurisdiction of Civil Courts in cases where the question relates to the determination of Government Revenue or to the details of partition; it does not oust the jurisdiction of the Civil Court in matters which involve a question of title. *Ananda Kishore* v. *Daije Thakurain, I. L. R. 36 Calc. 726*, relied on Where it was found that a tenure had been in existence for at least 75 years, that the origin of the tenancy was unknown, that substantial structures were erected on the land, that the conveyance of the tenure referred to the tenure as *miras* tenure, that while the transferable character of a jote purchased along with the tenure was disputed, the purchasers were left in undisturbed possession of the tenure:—*Held*, that from these circumstances it could be legitimately inferred that the tenure was of a permanent character. *Upendra Krishna Mandal* v *Ismail Khan, I. L. R. 32 Calc. 41: s c. 8 C. W. N. 889; Nilratan Mandal* v. *Ismail Khan, I. L R. 32 Calc. 51: s c 8 C. W. N. 895; Naba Kumari Debi* v. *Behari Lal Sen, I. L. R. 34 Calc. 902: s c 11 C. W. N 865*, relied upon. *Abdul Wahid* v. *Shaluka Bibi, I. L. R. 21 Calc 496*; distinguished. JANOKI NATH CHOWDHURY *v.* KALI NARAIN RAY CHOWDHURY (1910)

15 C. W. N. 45

PARTNERSHIP.

1. ——— *Partner whose remedy for general account is barred may sue to recover share of item received after dissolution.* A partner whose remedy against his co-partner for a general account is barred, can recover his share of a particular item of assets received after the dissolution of the partnership, if it be open to the defendant co-partner to ask the Court to take accounts with a view to show that the plaintiff had received more than his share in the partnership assets. *Sokkanadha Vanni Mundar* v. *Sokkanadha Vanni Mundar, I. L. R. 28 Mad. 344*, followed. THIRUVENGADA MUDALIAR *v.* SADAGOPA MUDALIAR (1910) . . . . **I. L. L. 34 Mad. 112**

2. ——— *Adjusted account—Settlement of basis of account—Final adjustment not signed—Pleadings, want of precision in, if material—Limitation—Cross demands in partnership account—New cause of action from adjustment—Limitation Act (IX of 1908), Sch. I, Arts. 64, 115 and 120.* When parties had agreed on the 2nd April 1905 that a settlement of partnership accounts between them should be made upon a certain basis and the final adjustment took place on the 20th August 1906 and entries to that effect were made in the books on that date but not signed by the parties, in a suit brought on the 16th April to recover the amount due on such adjustment:—*Held*, that it was an adjustment which gave rise to a fresh cause of action as from date, and whether it was Art. 115 or Art. 120 of the Limitation Act that applied, the suit was not barred. When the plaint did not specify the day on which the adjustment took place but approximately indicated the time and proof was furnished of exact date at the hearing:—*Held*, that there was nothing in the pleadings which should prevent the Judge from arriving at any conclusion on the evidence adduced as to the date. JALIM SINGH SRIMAL *v.* CHOONEE LALL JOHURRY (1911) . . . **15 C. W. N. 882**

PASTURAGE, RIGHT OF

——— *Unassessed Government Waste—Right of pasture on, not to exclude owner's*

PASTURAGE, RIGHT OF—*concld.*

right to possession—Acts necessary to obtain prescriptive title There are no statutory provisions in the Madras Presidency as in Bombay with reference to the grazing rights of villagers over adjoining Government waste. The right of pasture on unassessed waste cannot exclude the owner's right to possession and enjoyment of the property over which such a right may exist *Ram Saran Singh* v. *Birgu Singh, I L R 19 All. 172*, referred to *Secretary of State for India* v. *Mathmabhai, I. L R 14 Bom. 213, 221*, distinguished. GORIJALA PICHI NAIDU *v* VALLUR VEERIAH (1910) . . **I. L. R. 34 Mad. 58**

PAUPER SUIT.

See CIVIL PROCEDURE CODE. 1908, O XXXIII, r 1 . **I L. R. 33 All. 237**

See CIVIL PROCEDURE CODE, 1908, O. XXXIII, r. 13.
I. L. R. 35 Bom. 448

PAY AND PENSION

See SECRETARY OF STATE FOR INDIA.
I. L. R. 38 Calc. 378

PENAL CODE (ACT XLV OF 1860).

——— s. 21—*Illegal gratification, taking of, by a public servant—Public servant, unpaid apprentice of* An unpaid apprentice of Government is not a public servant within the meaning of s. 21 of the Indian Penal Code. MAHENDRA PROSAD *v.* EMPEROR (1910) . . **15 C W. N. 319**

——— ss. 24, 25, 463, 464, 471.

See FORGERY . **I. L. R. 38 Calc. 75**

——— s. 30.

See MAGISTRATE, POWER OF.
I. L. R. 38 Calc. 68

——— s. 64.

See CALCUTTA MUNICIPAL ACT, SS. 374, 376 . . . **15 C. W. N. 906**

——— ss 71, 147, 149 and 325—

See CRIMINAL PROCEDURE CODE, s. 106 (*3*).
I. L. R. 33 All. 48

——— s. 75—*Criminal Procedure Code (Act V of 1898), s. 565—Whipping Act (IV of 1909), s. 3—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order.* S 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict. It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping. EMPEROR *v.* FULJI DITYA (1910)
I. L. R. 35 Bom. 137

——— ss. 99, 147, 323, 353—

See SEARCH WITHOUT WARRANT.
I. L. R. 38 Calc. 304

PENAL CODE (ACT XLV OF 1860)—*contd*

——— s. 121A—

See CONSPIRACY TO WAGE WAR
I L. R. 38 Calc 169; 559
15 C. W. N. 646

——— s. 124A—

See SEDITION . **I. L. R. 38 Calc. 253**

——— *Press Act (XXV of 1867), ss. 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of a seditious book at the press—Sedition—Intention* The accused made a declaration under Act XXV of 1867, s 4, that he was the owner of a press called "The Atmaram Press." Beyond this, he took no part in the management of the press, which was carried on by another person. A book styled "Ek Shloki Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion It also contained seditious passages scattered among discussions of religious matters It was not shown that the accused ever read the book or was aware of the seditious passages it contained. The accused was convicted of the offence punishable under s. 124A of the Indian Penal Code, 1860, as publisher of the book. On appeal:—*Held*, by CHANDAVARKAR, *J.*, that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to him. *Held*, by HEATON, *J.*, that before the accused could be convicted under s. 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection; and that the evidence fell very short of proving the intention. *Per* CHANDAVARKAR, *J.* —A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it. EMPEROR *v.* SHANKAR SHRIKRISHNA DEV (1910)
I. L. R. 35 Bom. 55

——— ss. 124A, 153A—

See SEDITION . **I. L. R. 38 Calc. 214**

——— ss. 147, 323—

See APPELLATE COURT.
I. L. R. 38 Calc. 293

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 182—*Transfer—Unfounded allegations against the trying Magistrate made by an accused person in an application for transfer of his case. Held*, that an accused person, who in support of an application for the transfer of the case against him to some other Magistrate makes unfounded and defamatory allegations against the trying Magistrate, cannot be prosecuted in respect of such allegations under s 182 of the Indian Penal Code. *Queen* v. *Daria Khan, 2 N .W. P. H. C Rep 18*, and *Queen-Empress* v *Subbayya, I. L. R. 12 Mad. 451*, referred to. EMPEROR *v.* MATAN (1910) **I L. R. 33 All. 163**

——— ss. 191, 193—

See FALSE EVIDENCE. **I. L. R. 38 Calc. 368**

——— s 225B—

See WARRANT **I. L. R. 38 Calc. 789**

——— s. 280—*Rash and negligent act, proof and degree of—Contributory negligence, how far is an element for consideration—Evidence, consideration of, by the High Court in revision.* The accused was in charge of a steam launch which was coming up the river in a moonlight night. In the river at deep water some country boats were moored having no lights in them. The accused on account of mist could not make out whether the boats were stationary or moving but he thought they were moving. He gave whistles but before he could stop the launch, it came into collision with two of the boats with the result that they sank almost immediately. The accused then sent a jolly-boat to rescue the drowning passengers of the sunken boats:—*Held*, that under the circumstances of the case the accused was not guilty of the offence under s. 280, Indian Penal Code, as his conduct was not rash or negligent within the meaning of that section. To support conviction under s. 280, Indian Penal Code, it must be proved that the immediate cause of the accident was rashness, or negligence on the part of the navigator. In considering the question of degree, the question of contributory negligence has also to be taken into account, not as a defence to the indictment, but for the purpose of determining causation and fixing a measure of the liability of the navigator. When the accused navigator did all he could to save the situation but could not avoid the collision, he would not be guilty under s. 280, Indian Penal Code. The High Court in revision went through the evidence to decide whether the rashness or negligence was proved. KAMDAR ALI SERANG *v* EMPEROR (1911) . . **15 C. W. N. 835**

——— ss. 283, 114—*Obstruction in public way—Toy shop on a street—Exhibition of toys in the shop-window—Collection of crowd of persons in street—Obstruction.* The accused, who had a toy shop in a public street, exhibited in the window of the shop overlooking the street certain clockwork toys during a Diwali festival. The result of the exhibition was that thousands of people collected on the road to witness the toys: there were dangerous rushes in consequence, people were knocked down and great obstruction and danger were caused to those using the road. On these facts the accused were convicted of offences punishable under ss 283 and 114 of the Indian Penal Code *Held*, upholding the conviction, that there were obstruction, danger and injury to the persons using the public way, which amounted to a public nuisance, and that the efficient cause of the nuisance was the act of the accused. Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. *Attorney-General* v *Brigton and Hove Co-operative Supply Association*, [1900] *1 Ch. 276*, followed EMPEROR *v* NOOR MAHOMED (1911) **I. L. R. 35 Bom. 368**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 283—*concld.*

——— ss. 296, 39—*Public worship, disturbance of—"Voluntarily," meaning of* It is not necessary for the p rpose of s. 296, Indian Penal Code, that the accused should have an active intention to disturb religious worship. It is sufficient, if knowing they were likely to disturb it by their music they took the risk and did actually cause disturbance. It is an offence under s. 296, Indian Penal Code, to pass a mosque with music so as to disturb religious worship carried on during hours notified therefor. S. 79, Penal Code, cannot be pleaded in such a case. *Muthial Chetti* v *Bapan Saib, I L. R 2 Mad. 140*, followed. *Sundaram* v. *The Queen* and *Ponnusawmy* v. *The Queen, I. L. R. 6 Mad. 203*, followed. PUBLIC PROSECUTOR *v.* SANKU SEETHIAH (1910) **I. L. R. 34 Mad. 92**

——— s 297—*Trespass on a burial ground—Ploughing up burial ground—Joint owner.* Where a person entered upon a grove for the purpose of demarcating his share therein and in doing so dug up certain graves and exposed the bones of the persons buried there in spite of the remonstrances of the relations of the buried persons —*Held*, that he was properly convicted of an offence under s. 297 of the Penal Code, and none the less because he happened to be part owner of the grove. *Queen-Empress* v. *Subhan, I. L R 18 All. 395*, referred to. EMPEROR *v.* RAM PRASAD (1911) **I. L. R. 33 All. 773**

——— s. 339—*Wrongful restraint, what necessary to constitute.* The accused placed a lock on the outer door of complainant's house intending to prevent and thereby preventing his ingress:—*Held*, that the offence of wrongful restraint was established although the accused were not physically present to enforce the obstruction. There is nothing in s. 339, Criminal Procedure Code, which requires the physical presence of the obstructor at the moment of prevention. ARUMUGAKADAR *v.* EMPEROR (1910) . **I. L. R. 34 Mad. 547**

——— s. 379—*Servant's removing things at master's bidding when theft.* In order to convict a

PENAL CODE (ACT XLV OF 1860) *contd.*

——— s. 379—*concld.*

servant of theft under s 379, Indian Penal Code, for having cut away some bamboos at the order of his master, it must be clearly shown that he (the servant) knew of the dishonest intention of his master *Hari Bhumali* v *The Emperor, 9 C W. N. 974,* followed RADHA MADHAB PAIKRA *v* THE KING-EMPEROR (1910) . **15 C. W. N. 414**

——— s. 396

See DACOITY . **15 C. W N. 434**

——— s. 401.

See PREVIOUS CONVICTIONS, EVIDENCE OF. **I. L R. 38 Calc. 408**

1. ——— s 409—**Criminal misappropriation**—*Evidence—What prosecution has to prove.* On a charge under s. 409 of the Indian Penal Code it is not necessary for the prosecution to prove in what manner money alleged to have been misappropriated has actually been disposed of by the accused. If it is shown that money entrusted to the accused was not accounted for nor returned by him in accordance with his duty, if unspent, it lies on the accused to prove his defence EMPEROR *v.* KADIR BAKHSH (1910) . **I. L R. 33 All. 249**

2. ——— **Criminal breach of trust**—*Charge—Criminal Procedure Code, s. 222 (2).* An accused person was charged under s. 409 of the Indian Penal Code with having embezzled an aggregate sum of R208-12-0 on various dates between the 1st July and the 1st November 1909. *Held,* that the charge so framed was not open to objection, notwithstanding that evidence was available as to the various items of which the aggregate sum charged was composed *Emperor* v. *Gulzari Lal, I. L. R 24 All 254, Emperor* v *Ishtiaq Ahmad, I. L R 28 All 69; Samiruddin Sarkar* v *Nibaran Chandra Ghose, I L. R. 31 Calc. 928; Sat Narain Tewari* v *Emperor, I. L. R. 32 Calc 1085,* and *Thomas* v *Emperor, I. L R 29 Mad 558,* followed *Subramania Ayyar* v. *King-Emperor. I. L. R. 25 Mad 51,* distinguished EMPEROR *v.* IBRAHIM KHAN (1910) . **I L R 33 All. 36**

——— s. 421—**Criminal proceedings against insolvent**—*Presidency Towns Insolvency Act (III of 1909), ss 17, 103, and 104—Adjudged insolvent—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—"Suit or other legal proceeding," interpretation of* A person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act, 1909; and was adjudicated an insolvent. Ten days later, a creditor of the insolvent, without having obtained any sanction from the Insolvent Debtors Court, filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s. 421 of the Indian Penal Code, 1860. It was contended that the Magistrate had no jurisdiction to entertain the complaint. *Held,* that the Magistrate's jurisdiction to try the insolvent for an offence under s 421 of the Indian Penal Code, 1860, was not taken away by anything contained in the Presidency Towns Insolvency Act, 1909. The expression "or other legal proceeding" in s. 17 of the Presidency Towns Insolvency Act, 1909, coming after the word "suit," a word of more limited application, must be construed on the principle of *ejusdem generis.* It, therefore, includes only proceedings of a civil nature. EMPEROR *v.* MULSHANKAR HARINAND BHAT (1910) **I. L. R. 35 Bom. 63**

PENAL CODE (ACT XLV OF 1860)—*concld*

——— s 421—*concld.*

——— ss. 426, 447.

See CRIMINAL TRESPASS. **I. L R. 38 Calc. 180**

——— s. 434.

See CRIMINAL PROCEDURE CODE, s. 106. **I. L. R. 33 All. 771**

——— s. 467—**Witness proving forged document, if abets**—*Abetment. Semble* It is doubtful whether a witness who swears to the truth of a document in Court can be said to abet its use. *Asimuddi* v. *King-Emperor, 11 C. W. N. 838 : s.c. 5 C. L J. 454,* referred to. DEBI LAL *v* DHAJADHARI GASHAI (1911) . . . **15 C. W. N. 565**

——— s. 499.

See LIBEL . . **15 C. W. N. 995**

——— pending proceedings—

See MAGISTRATE, POWER OF. **I. L. R. 38 Calc. 68**

PENSIONS.

See PENSIONS ACT (XXIII OF 1871), SS 3, 4, 6 AND 8 . **I. L. R. 33 All. 580**

PENSIONS ACT (XXIII OF 1871).

——— ss. 3, 4, 6, 8—*Pension—Definition—Grant of village by Government revenue free—Wajib-ul-arz—Construction of document—Condition purporting to restrain alienation. Held,* that a grant of zamindari, the revenue of which is remitted by the Government, is not a pension within the meaning of s. 3 of the Pensions Act, 1871, and no certificate is necessary under s 6 to institute a suit with respect to it. Nor can an entry in the *wajib-ul-arz* to the effect that "no co-sharer is competent to transfer property" standing by itself, have the effect of making such property untransferable. *Ganpat Rao* v. *Anand Rao, I. L. R. 28 All. 104; 32 All. 148,* and *Lachmi Narain* v. *Makund Singh, I. L. R 26 All 617,* referred to. MANNU LAL *v.* FAZL IMAM (1911) . . **I. L. R. 33 All. 580**

——— s. 4.

See SECRETARY OF STATE FOR INDIA. **I L R. 38 Calc. 378**

PERJURY.

See EXCISE ACT, S. 16. **15 C. W. N. 169**

PERMANENT SETTLEMENT.

See MALIKANA . 15 C. W. N. 1029

PERMANENT SETTLEMENT REGULATION.

See REGULATION I OF 1793. 15 C. W. N. 300

PERMANENT TENURE.

See ESTATES PARTITION ACT, S 111 15 C. W. N. 45

PERSONÆ INCERTÆ.

See WILL . . 15 C. W. N. 945

PLAINT.

——— amendment of—

See CAUSE OF ACTION. I. L. R. 38 Calc. 797

See IDOL . I L R. 33 All. 735

See LIMITATION ACT (IX OF 1908), S 3 I. L. R. 33 All. 616

See PARTITION, SUIT FOR. I. L. R. 38 Calc. 681

PLEADER AND CLIENT.

See LEGAL PRACTITIONERS ACT, S 28. 15 C. W. N. 681

PLEADER'S FEES.

——— *Rules of Court of the 4th April 1894, rule 80(1), proviso—Pleader's fees—Fee certificate not filed at or before the hearing—Fee not paid before hearing—Discretion of Court. Held,* on a construction of rule 80 (*1*) of the rules of Court of the 4th April 1894, that the *proviso* to rule 30 only gives a court a discretion to accept a certificate for fees filed after the commencement of the hearing, but, whatever might have been intended, leaves no discretion as to the allowance, on taxation, of a fee, which in fact was not paid on or before the first hearing. BANK OF BENGAL, CAWNPORE *v.* KALKA DAS (1911) . I. L. R. 33 All. 374

POLITICAL AGENT AT SIKKIM, COURT OF.

——— *Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1882), s. 229A (Act V of 1908), ss. 43, 45.* By the notifications of the 29th March, 1889, and 3rd October, 1907, the Governor-General in Council declared that s. 229A of the Code of Civil Procedure of 1882 (s. 45 of the Code of 1908) should apply to the Court of the Political Agent at Sikkim. A decree obtained in the Court of the Political Agent at Sikkim and transferred for execution to a Court in British India, could therefore be executed within the jurisdiction of that Court. ZAMIL AHMED *v.* THE MAHARAJAH OF SIKKIM (1911) I. L. R. 38 Calc. 859

POLITICAL OFFICER.

——— certificate of, for trial of offence—

See CRIMINAL PROCEDURE CODE, SS. 188, 227 . . I. L. R 33 All. 514

POSSESSION.

See ARMS ACT, S. 19 (*f*). 15 C. W. N. 440

See CIVIL PROCEDURE CODE, 1908, S 47. I. L. R. 35 Bom. 452

See CRIMINAL PROCEDURE CODE, S. 145. I. L. R. 34 Mad 138

See INJUNCTION. I. L R. 38 Calc. 791

See MAHOMEDAN LAW—DOWER. I. L R. 38 Calc 475

See SPECIFIC RELIEF ACT, S. 9. 15 C. W. N. 294 I. L. R. 33 All. 647

——— by agent—

See LIMITATION ACT (XV OF 1877), ARTS. 142 AND 144 . I. L. R. 35 Bom. 79

——— suit for—

See LIMITATION ACT (XV OF 1877), ARTS. 142 AND 144 . I. L. R. 35 Bom 79

——— *Possession, nature of, necessary to prove lost grant or title by adverse possession—Madras Forest Act (V of 1882), ss 3, 16, 25—Notification under s 25 of reservation made before the Act extinguishes all rights existing at time of reservation.* Whether enjoyment is set up as the basis of a title by prescription or as evidence on which a lost grant should be presumed, the same characteristics will be necessary. Acts done on parts of a tract of land will only be evidence of possession of the whole where the said tract of land possesses a defined boundary *Sivasubramanya* v. *Secretary of State for India, I. L R 9 Mad 285 at pp. 304 and 305,* referred to The intention of the legislature in enacting s 25 of the Madras Forest Act is to place all forests reserved by executive order prior to the introduction of the Act on precisely the same footing as reserves subsequently constituted in accordance with the provisions of the Act The intention was that the notification under s. 25 should operate in exactly the same manner as one under s 16 to which s 17 is a mere corollary The further inquiry provided for in s. 25 is purely discretionary with Government Where a reservation made prior to the Act is notified under s 25 of the Act, such notification extinguishes any right existing at the time of reservation whether the lands were within s. 3 of the Act, at the disposal of Government or not at the time of reservation. Where the reservation is made under s. 16, the section provides a mode of redress to the party; while s. 25 gives none as the further inquiry provided therein is merely discretionary with the Government SUBRAMANIA PILLAI *v.* THE SECRETARY OF STATE FOR INDIA (1910) I. L. R. 34 Mad. 353

POSSESSORY SUIT.

See MAMLATDAR'S COURTS ACT (BOM. II OF 1906), SS 19. 23. I. L. R. 35 Bom. 487

POWER OF ATTORNEY.

See STAMP ACT (II OF 1899), SS. 2 (21) AND 60; SCH. I, ART 48 (*g*).
I. L. R. 33 All. 487

PRACTICE.

See ACQUITTAL, POWER TO REVISE AN ORDER OF . I. L. R. 38 Calc. 786

See APPEAL . I. L. R. 38 Calc. 307

See CIVIL PROCEDURE CODE, 1882, SS 276, 295, 320, 325A.
I. L. R. 35 Bom. 516

See CIVIL PROCEDURE CODE, 1882, S. 539
I. L. R. 35 Bom. 470

See CIVIL PROCEDURE CODE, 1908, O V. RR. 15—23 . I. L. R. 33 All. 649

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXI, R 1.
I. L. R. 35 Bom. 35

See CONTEMPT OF COURT
15 C. W. N. 771

See CRIMINAL PROCEDURE CODE, S. 520
I. L. R. 35 Bom. 253

See CRIMINAL REVISION.
I. L. R. 38 Calc 933

See DECREE . I. L. R. 38 Calc. 125

See DISCOVERY . I. L. R. 38 Calc. 428

See DIVORCE ACT (IV OF 1869), S 23.
I. L. R. 33 All. 500

See HINDU LAW—WILL
I. L. R. 38 Calc 188

See IDOL . . I. L. R. 33 All. 735

See MUKHTEAR . I. L. R. 38 Calc. 488

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 25.
I. L. R. 35 Bom. 47

See REVIEW IN CRIMINAL CASES.
I. L. R. 38 Calc. 828

See WARRANT . I. L. R. 38 Calc. 789

1 ——— **Raising of issues.** The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the judge to frame for decision by the jury in a jury trial at *nisi prius* in England. WEST END WATCH COMPANY *v.* BERNA WATCH COMPANY (1910)
I. L. R. 35 Bom. 425

2. ——— **Redemption suit**—*Second suit in ejectment—Res judicata—Court—Discretion—In ejectment suit a decree for redemption can be passed—Civil Procedure Code (Act V of 1908), s. 11, Expl. IV.* It is the practice of the Bombay High Court to pass a decree for redemption in a case in which the plaintiff has sued in ejectment. That is purely in the exercise of the Court's discretionary power; and it can hardly be maintained that the plaintiff failing in an ejectment suit ought to pray for the alternative relief by way of redemption, when the Court is not bound to grant it as a matter of right MAHOMED IBRAHIM *v* SHEIKH HAMJA (1911) . . . I. L. R. 35 Bom. 507

3. ——— **Local Inspection**—*Subordinate Judge—Personal view of disputed premises—Appreciation of evidence based on the personal view.* The plaintiff, in a suit to establish easement of passing his rain-water over the defendant's field, tried to make out his right by the evidence of his witnesses who deposed that the passage for the rain-water had all along existed and was still visible to the eye The Subordinate Judge visited the spot in question, at the request of both parties, to test the veracity of the witnesses; but, finding that there was no passage at the spot, he disbelieved the witnesses and dismissed the suit. On appeal, it was contended that the Subordinate Judge had wrongly decided the case, because he had disposed of it, not by appreciating the evidence, but by the light of his own view of the passage :—*Held*, that there was no error in the procedure adopted by the Subordinate Judge LAKMIDAS KHUSHAL *v.* BHAIJI KHUSHAL (1911)
I. L. R. 35 Bom. 317

4 ——— **Security for cost**—*Infant plaintiff—Civil Procedure Code (Act V of 1908), Sch. I, O XXV, r. 1* It is not desirable to run any risk of stopping a suit filed on behalf of an infant, which may be a proper suit to bring, merely because of some inability on the part of the next friend to give security for costs BHAISHANKER AMBASHANKER *v.* MULJI ASHARAM (1910)
I. L. R. 35 Bom. 339

5. ——— **Sentence**—*Magistrate passing non-appealable sentence—Adding to sentence to make it appealable—Appeal to Sessions Judge—The Sessions Judge to entertain the appeal and to decide it on merits—Criminal Procedure Code (Act V of 1898), s. 13.* The Magistrate trying a case passed at first a non-appealable sentence on the accused, but at the request of the accused, made an addition to the sentence passed so as to make it appealable When the accused appealed to the Sessions Judge his appeal was dismissed on the ground that no appeal lay inasmuch as the sentence first passed by the Magistrate was not appealable and the addition to the sentence could not be made legally. In revision :—*Held*, that the Sessions Judge had committed an error in holding that he had no jurisdiction to hear the appeal; for though the Magistrate had no jurisdiction to alter the sentence once passed by him, yet for the purposes of the Sessions Judge's jurisdiction, so far as the appeal was concerned, that was the very mistake which he was called upon to correct by way of appeal. When the appeal was heard again by the Sessions Judge he struck out the addition made by the Magistrate in the sentence, and having done that, dismissed the appeal on the ground that the sentence appealed from was not appealable. In revision :—*Held*, that

PRACTICE—*concld.*

when the Magistrate had passed a sentence beyond one month, an appeal lay to the Sessions Judge, under s. 413 of the Criminal Procedure Code, whether that sentence was passed legally or illegally *Held*, also, that the Sessions Judge being once seized of the appeal the whole appeal became open to his Court, even on merits EMPEROR *v.* KESHAVLAL VIRCHAND (1911) **I. L. R. 35 Bom. 418**

6. — — Service of summons—*Procedure—Civil Procedure Code (Act V of 1908), O V, r. 25—Service of summons by registered post on defendant residing out of British India—Summons returned marked "Refused to take"—General Clauses Act (X of 1897), s. 27.* A summons was sent by registered post addressed to the first defendant at Navalgarh in the State of Jaipur and purported to be sent in accordance with the provisions of O V, r 25, of the Civil Procedure Code (Act V of 1908). The cover was returned with an endorsement in the vernacular which was translated as follows :— "Refused to take. The handwriting of Chunilal, postman" *Held*, that, as it appeared that the cover was properly addressed to the first defendant and had been registered, duly stamped and posted, the Court was entitled to draw the inference indicated in s 27 of the General Clauses Act and to hold that there was sufficient service. *Per Curiam* The only rule, if it can be called a rule, to be laid down, is that the Court must be guided in each case by its special circumstances as to how far it will give effect to a return of a cover endorsed "refused" or words to the like effect. *Jagannath Brakhbhuu* v. *J. E. Sassoon, I. L. R. 18 Bom. 606*, distinguished. BALURAM RAMKISSEN *v.* BAI PANNABAI (1910) . . **I. L. R. 35 Bom. 213**

PRE-EMPTION.

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1. RIGHT OF PRE-EMPTION.

1. ——— ——— *Pre-emption—Wajib-ul-arz—Notice of sale given to member of a joint Hindu family—Effect of such notice—Effect of conditional reply disputing amount of alleged consideration Held*, that a person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him, because he believes that such price is in excess of the real price, where such belief is entertained and expressed in good faith. Where the pre-emptor and his brothers were members of a joint Hindu family and the vendor addressed a notice to him and his brothers jointly, to which the pre-emptor's brother sent a reply. *Held*, that the plaintiff pre-emptor was entitled to claim the benefit of this reply as it had been sent by himself. *Lajja Prasad* v. *Debi Prasad, I. L. R. 3 All. 236, Amir Chand* v. *Ishar Das, All. Weekly Notes (1882) 136, Bholi Bibi* v. *Fahima Bibi, All Weekly Notes (1882), 46*, and *Karim Bakhsh* v. *Khuda Bakhsh, I. L R. 16 All. 247*, followed SRI KISHAN SINGH *v.* BACHCHA PANDE (1911) **I. L. R. 33 All. 637**

PRE-EMPTION—*contd.*

1. RIGHT OF PRE-EMPTION—*concld.*

2. ——— *Claim of pre-emptor based on purchase by him of another share in the same mahal—Claim made before confirmation of sale in plaintiffs favour—Civil Procedure Code, 1882, s 316. Held*, with reference to s. 316 of the Code of Civil Procedure, 1882, that a purchaser at auction sale in execution of a decree of a share in zamindari property does not become a co-sharer in the mahal in which such property is situate until the sale has been confirmed in his favour HASAN ALI *v* MIAN JAN KHAN (1910) **I. L. R. 33 All. 45**

2. CONSTRUCTION OF WAJIB-UL-ARZ.

1. ——— *Pre-emption—Wajib-ul-arz—Construction of document—Partition of village—New wajib-ul-arzes prepared after partition.* The wajib-ul-arz of a village before partition provided for pre-emption in the following way :—"Rights of co-sharers as among themselves on the basis of custom or agreement. The custom of pre-emption obtains. In case of sale of property by a co-sharer, another co-sharer in the mauza can bring a suit for pre-emption If he offers a low price, then the vendor can sell the property to a stranger." The village was divided by perfect partition into three mahals New wajib-ul-arzes were drawn up after partition, and the condition as to pre-emption in each ran as follows :—"Rights of co-sharers *inter se* based on custom or agreement. The custom of pre-emption prevails. In this case one co-sharer sells his share (*hakiat*), another co-sharer in the village (*hissedar sharik mauza*) can claim pre-emption If he offers a smaller price the seller can sell it to a stranger." The plaintiff pre-emptor was a co-sharer in a different mahal from that in which the property sold was situate. The vendee was a stranger to the village. The entire body of co-sharers in the village were Muhammadans of the same stock, and continued so up to the time of partition. *Held*, upon a construction of the language of the wajib-ul-arz and the circumstances of the case, that the pre-emptor must succeed as against the stranger vendee notwithstanding that a partition had taken place. *Janki* v. *Ram Partab Singh, I. L R. 28 All. 286*, referred to. CHEPHUR *v.* ABDUL HAKIM (1910) . . . . **I. L. R. 33 All. 296**

2. ——— *Wajib-ul-arz—Construction of document—Contract or custom—Presumption in absence of evidence that the record is one of custom.* Where it is not apparent, either from the language of the wajib-ul-arz itself or from other evidence, that the pre-emption clause of a wajib-ul-arz is merely the record of a new contract between the co-sharers, the presumption is that it is the record of a pre-existing custom. *Majidan*

PRE-EMPTION—*contd.*

2. CONSTRUCTION OF WAZIB-UL-ARZ—*concld.*

Bibi v. *Shaikh Hayatan, All. Weekly Notes (1897) 3,* followed. The pre-emptive clause of a wajib-ul-arz was headed "Relating to the right of pre-emption" and ran as follows:—"If a co-sharer has to sell and mortgage his *haqiat*—then at the time of transfer it will be incumbent that he should after giving information sell and mortgage for a proper price, etc., etc" *Held*, that this in the absence of evidence to the contrary indicated a pre-existing custom of pre-emption rather than a contract BHIM SEN *v* MOTI RAM (1910) **I. L. R. 33 All. 85**

3. ——— *Wajib-ul-arz—Construction of document—"Intiqal"—Perpetual lease. Held*, that the word "intiqal" used in the pre-emptive clause of a wajib-ul-arz was wide enough to include a perpetual lease. *Jagadam Sahai* v. *Mahabir Prasad, I. L. R. 28 All. 60,* and *Ahmad Ali Khan* v. *Ahmed, 1 N. W. P. 101,* referred to LALJI MISR *v.* JAGGU TEWARI (1910) **I. L. R. 33 All 104**

4. ——— *Wajib-ul-arz—Construction of document—"Apna shafi"—Mahomedan law.* A wajib-ul-arz provided that if any co-sharer of a patti in the *Khalisa* wished to sell his share, he would do so paying due respect to his own pre-emptor (*apna shafi*), and if the latter refused and all the other pre-emptors of the village (*aur sub shufian deh*) refused then he might sell to a stranger. *Held*, that the expression *apna shafi* connoted nearness in space and not a blood-relationship, and therefore where the vendor and pre-emptor were co-sharers in the same patti, the vendee being a co-sharer in a different patti, the co-sharers in the same patti had a preferential right. LAKHAN SINGH *v.* BISHAN NATH (1910) **I. L. R. 33 All. 299**

3. CUSTOM.

1. ——— *Wajib-ularz—Custom—Evidence—Nature of evidence required to establish a custom of pre-emption.* The plaintiffs claimed a right, based upon contract or custom, to pre-empt a sale of zamindari property. The property was situate in one of the three mahals of a village named Suram. The plaintiffs were not co-sharers with the vendors in that mahal: the vendees were strangers. In 1873 the village Suram consisted of a single mahal, and the village *wajib-ul-arz* of that date contained the following reference to pre-emption:—"In future if any *pattidar* wishes to transfer his share by sale . . . to a stronger . . . first, the sharers in the *pattikhas*, then *pattidars* in the *thok*; and then *digar pattidaran deh* shall have a right to purchase." In 1883 perfect partition took place, and the village was divided into three separate mahals. A fresh *wajib-ul-arz* was drawn up for each of the new mahals, but in each the provisions regarding pre-emption were copied *verbatim* from the *wajib-ul-arz* of 1873. *Held*, (i) that the plaintiffs had failed to establish any right of pre-emption based on contract; (ii) that the oral evidence was worthless as supporting the custom set up by the plaintiffs; and (iii) that the evidence afforded by the *wajib-ul-arzes* of 1873 and 1883 was quite insufficient to establish the right claimed by the plaintiffs, if such right was to be regarded as one based on an alleged custom. *Dalganjan Singh* v. *Kalka Singh, I. L. R. 22 All. 1,* referred to *Ausera Lal* v. *Ram Bhajan Lal, I. L. R. 27 All. 602,* and *Sardar Singh* v. *Ijaz Husain Khan, I. L. R. 28 All. 614,* discussed. GANGA SINGH *v* CHEDI LAL (1911) **I. L. R. 33 All. 605**

2. ——— *Wajib-ul-arz—Custom or contract—Construction of document—Regulation VII of 1882* In a suit for pre-emption, wajib-ul-arzes of 1839 and 1869, were produced. The preamble to the former was worded thus:—"Having well understood the following matters we willingly accept them." It then dealt with the right of pre-emption in the following terms:—"Mode of sale or transfer of whole or part of share" giving the right of pre-emption to co-sharers as against strangers, and concluded with the words: "therefore we write this *iqrarnama* so that it may be of use in future." The wajib-ul-arz of 1869 provided that "near co-sharers and other pattidars would have the right of pre-emption. Preference amongst them would be according to degrees of nearness":—*Held* (STANLEY, *C J.*, dissenting), that the wajib-ul-arzes contained the record of custom and not of contract. *Per* STANLEY, *C.J.*:—A custom to be binding must be unaltered, uniform constant and definite. If the settlement of 1833 recorded a custom, then the co-sharers in the village at the time of the later settlement of 1869 must be deemed to have abrogated it and to have adopted by agreement the right of pre-emption which is recorded in the later wajib-ul-arz as more suitable to the then existing conditions The variance in the rights as defined in two wajib-ul-arzes leads to the conclusion that the right recorded in 1869, cannot be treated as a right existing by custom. *Per* KNOX and CHAMIER, *JJ.*—The word *iqrar* does not necessarily mean a contract. It means *ratification* or *assent.* RETURAJI DUBAIN *v.* PAHALWAN BHAGAT (1910) . . **I. L. R. 33 All. 196**

PRE-EMPTION—*concld.*

3. CUSTOM—*concld.*

PRELIMINARY DECREE.

See MORTGAGE . **I. L. R. 38 Calc. 913**

PRESCRIPTION.

See EASEMENT.

——— **Prescription, proof of acquisition of title by**—*Acts necessary to prove prescriptive right as trustee of tank—Such right not acquired by acts of conservancy, maintaining and repairing, etc.* A prescriptive right as trustee of a tank, the common property of a village, cannot be acquired by performing acts of conservancy, clear-

PRESCRIPTION—*concld.*

ing and maintaining the tank, building flights of steps, sluices, etc., enjoying the fruits of trees in the bund, selling withered trees and similar acts. *Muthayya* v *Sivaraman, I. L. R. 6 Mad. 229*, followed. *Sivaraman Chetty* v. *Muthayyan Chetty, I. L. R. 12 Mad 241, 248*, followed. KARUTHAN CHETTY *v.* KALIMUTHAN (1910)
I. L. R. 34 Mad. 323

PRESIDENCY MAGISTRATE.

———— notes of depositions—

See COPY . . 15 C. W. N. 770

PRESIDENCY SMALL CAUSE COURT.

———— *New Trial—Powers of Bench sitting on application for new trial—Jurisdiction—Practice—Questions of fact and of law—Presidency Small Cause Courts Act (XV of 1882), ss 37 and 38—Amendment Act (I of 1895), s. 13—Civil Procedure Code (Act V of 1908), s 115.* The Second Judge of the Presidency Small Cause Court having dismissed a suit after trial, the plaintiffs applied under s 38 of the Presidency Small Cause Courts Act for a new trial, and the Judges (the Chief and the Second) on such application set aside the order of dismissal and transferred the suit to the Third Judge to be tried by him. On a motion to the High Court by the defendants to set aside the order for new trial :—*Held*, that s. 38 of the Presidency Small Cause Courts Act gives the Court power, *inter alia*, to order a new trial to be held ; and that there is no limitation in s. 38 that the Court can only exercise the power if a question of law arises. *Sassoon* v *Hurry Das Bhukut, I. L. R. 24 Calc. 455*, referred to. JOHAN SMIDT *v.* RAM PRASAD (1911) . . . I. L. R. 38 Calc 425

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

———— ss. 37, 88

See PRESIDENCY SMALL CAUSE COURT
I. L. R. 38 Calc. 425

PRESIDENCY SMALL CAUSE COURTS (AMENDMENT) ACT (I OF 1895).

———— s. 13.

See PRESIDENCY SMALL CAUSE COURT.
I. L. R. 38 Calc. 425

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).

———— ss. 7, 86—*Official Assignee—Third person's property taken in custody by Official Assignee—Suit by stranger—Civil Court—Right of suit.* Where the Official Assignee takes into his possession property as belonging to the insolvent which a third party claims a his own, the latter can bring a suit against the Official Assignee in a Civil Court to establish his right. NAGINLAL CHUNILAL *v.* THE OFFICIAL ASSIGNEE (1911)
I. L. R. 35 Bom. 473

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld*

———— ss. 17, 103 and 104—*Adjudged insolvent—Criminal proceedings against the insolvent—Penal Code (Act XLV of 1860), s 421—Sanction of Insolvency Court not obtained—Jurisdiction of Magistrate—"Suit or other legal proceeding," interpretation of* A person in insolvent circumstances applied to the Insolvent Debtors Court at Bombay for relief under the provisions of the Presidency Towns Insolvency Act, 1909, and was adjudicated an insolvent. Ten days later, a creditor of the insolvent, without having obtained any sanction from the Insolvent Debtors Court, filed a complaint against the insolvent in the Presidency Magistrate's Court for an offence punishable under s 421 of the Indian Penal Code, 1869 It was contended that the Magistrate had no jurisdiction to entertain the complaint *Held*, that the Magistrate's jurisdiction to try the insolvent for an offence under s 421 of the Indian Penal Code, 1860, was not taken away by anything contained in the Presidency Towns Insolvency Act, 1909. The exprssession "or other legal proceeding" in s. 17 of the Presidency Towns Insolvency Act, 1909, coming after the word "suit," a word of more limited application, must be construed on the principle of *ejusdem generis*. It, therefore, includes only proceedings of a civil nature. EMPEROR *v* MULSHANKAR HARINAND BHAT (1910) . . . I. L. R. 35 Bom 63

———— s. 25—*Protection order—Previous decisions on applications for interim orders—Discretion—Practice.* It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict , c. 21) to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their discretion, and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion. S. 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent diligently performs the duties prescribed by the Act he should not be harassed by execution creditors, and should not be rendered liable to pressure whereby one creditor may get undue advantage over another The section does not deprive the Court of its discretion in granting or refusing protection, but sub-s. (*1*) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant. If an insolvent can produce the certificate referred to, the onus is thrown on the opposing creditors of showing cause why the protection order should not be granted. *In the matter of* MEGHRAJ GANGABUX (1910) . . . I. L. R. 35 Bom. 47

———— s. 108.

See LETTERS OF ADMINISTRATION
15 C. W. N 350

———— s. 126.

See INSOLVENCY . I. L. R. 38 Calc. 542

PRESUMPTION.

See ADVERSE POSSESSION.
I. L. R. 33 All. 229

See AGRA TENANCY ACT (II OF 1910), s. 201 . . I. L. R. 33 All. 799

See CUSTOM . I. L. R. 33 All. 257

See HINDU LAW—JOINT FAMILY
I. L. R. 33 All. 677

See HINDU LAW—MARRIAGE.
I. L. R. 38 Calc. 700

See LANDLORD AND TENANT
I. L. R. 33 All. 757

See MAHOMEDAN LAW—DOWER.
I. L. R. 33 All. 291

PREVIOUS CONVICTIONS.

——— Previous Convictions, evidence of—*Belonging to a Gang of Thieves—Habit—Evidence of habit—Admissibility of evidence of previous convictions of offences against property and of bad livelihood—Penal Code (Act XLV of 1860), s 401.* Where the other evidence in a case under s 401 of the Penal Code establishes association for the purpose of habitually committing theft, evidence of previous convictions of offence, against property and of bad livelihood is admissible to prove habit; and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts *Empress v. Naba Kumar Patnaik, 1 C W. N 146, Meher Ali Sarkar v Emperor (Cr. App. 742 of 1900,* decided 20th March 1901, by PRINSEP and HILL, *JJ*) (unreported), *Madhu Dhari v. Emperor* (Cr. App. 582 of 1905, decided 26th July 1905, by RAMPINI and MOOKERJEE, *JJ.*) (unreported), *Khanta Kurwal v. Emperor* (Cr. App. 78 of 1909, decided 28th January 1909, by HOLMWOOD and RYVES, *JJ.*) (unreported), *Gobardhan v. Emperor* (Cr. App 958 of 1910, decided 21st November 1910, by HOLMWOOD and FLETCHER, *JJ*) (unreported), referred to *Mankura Pasi v. Queen-Empress, I. L. R. 27 Calc. 139,* doubted and explained BHONA *v.* EMPEROR (1911)
I. L. R 38 Calc. 408

PRINCIPAL AND AGENT.

See ACCOUNT SUIT . 15 C. W. N. 930

PRINCIPAL AND INTEREST.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)
I. L. R. 35 Bom. 204

PRINTER AND PUBLISHER.

See CONTEMPT . 15 C. W. N. 771

——— liability of—

See SEDITION.
I. L. R. 38 Calc. 227; 253

PRINTING PRESS, FORFEITURE OF.

——— "*Newspaper,*" *definition of—Paper not containing periodically public news or comments thereon—Onus of proof of character of the paper—Formal proof of newspaper and offending matter—"Incitement" to murder and acts of violence—Use of seditious language—Newspapers (Incitement to offences) Act (VII of 1908), ss. 2 (1) (b), 3—Power of third Judge on difference of opinion between Judges of the Court of Appeal, to deal with the whole case against an accused—Criminal Procedure Code (Act V of 1898), s 429.* The definition of a "newspaper" in s 2 (*1*) (*b*) of Act VII of 1908 must be read as a whole It refers to a work which publishes periodically public news or comments thereon It is not enough to take a single issue of it, and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon When it is disputed whether a work is a "newspaper" the prosecution ought to establish its alleged character by proof of the contents of more than one issue. To bring a case under s. 3 (*1*) of the Act the character of the offending paper as a "newspaper" has to be first established, and this may not always be possible by the production and proof of the contents of one issue only. In a proceeding under s. 3 of the Act the newspaper and the offending matter must be regularly proved. In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed. S 3 (*1*) of the Act confers very limited powers of forfeiture and applies only to the cases of presses used for the printing of newspapers which contain an incitement to the particular crimes or class of crimes specified therein The word "incitement" clearly implies the idea of rousing to action, instigation or stimulation. The use of seditious language, sufficient to bring the case under s 124A of the Penal Code, is not equivalent to an incitement to offences mentioned in s. 3 (*1*) of Act VII of 1908. A thinly veiled glorification of rebellion implying a desire on the part of the writer that there should be a successful rebellion, though it may amount to sedition under s 124A of the Penal Code, is not sufficient to bring the case within s. 3 (*1*) of the Act. There must be something more direct and specific for that purpose. In the case of two prisoners, regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion, it may be that what has to be laid before another Judge is the case of such prisoner alone. But where they are equally divided as to the guilt of one accused, though in certain aspects they may be agreed, the whole case as regards the accused is laid before the third Judge, and not merely the point or points on which there is a difference of opinion, and it is his duty to consider all the points involved before delivering his opinion upon the case. SARAT CHANDRA MITRA *v.* EMPEROR (1910)
I. L. R. 38 Calc. 202

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867).

——— ss. 4, 5—*Press Act (XXV of 1867), ss. 4 and 5—Declaration made by owner who took no part in managing a printing press—Publication of*

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867)—*concld.*

——— ss. 4, 5—*concld.*

a seditious book at the press—Penal Code (Act XLV of 1860), s. 124A—Sedition—Intention. The accused made a declaration under Act XXV of 1867, s 4, that he was the owner of a press called "The Atmaram Press" Beyond this, he took no part in the management of the press, which was carried on by another person A book styled "Ek Shloki Gita" was printed at this press. It was a book that dealt to a large extent with metaphysics, philosophy and religion It also contained seditious passages scattered among discussions of religious matters It was not shown that the accused ever read the book or was aware of the seditious passages it contained The accused was convicted of the offence punishable under s 124A of the Indian Penal Code, 1860, as publisher of the book. On appeal,—*Held*, by CHANDAVARKAR, *J*, that the cumulative effect of the surrounding circumstances was such as to make it improbable that the accused had read the book or that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, a reasonable doubt arose as to the guilt of the accused, the benefit of which should be given to him *Held*, by HEATON, *J*, that before the accused could be convicted under s 124A of the Indian Penal Code it must be found that he had an intention of exciting disaffection; and that the evidence fell very short of proving the intention *Per* CHANDAVARKAR, *J*. —A declaration made under s. 4 of the Press Act is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on a person declaring in respect of matters where public interests are involved Hence where a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances The presumption, however, is not conclusive; it is not one of law, but of fact, and it is open to the accused to rebut it EMPEROR *v.* SHANKAR SHRIKRISHNA DEV (1910) . . I. L. R. 35 Bom. 55

——— s. 7.

See SEDITION.
I. L. R. 38 Calc. 227; 253

PRIOR RIGHT.

See HINDU LAW—ADOPTION
I. L. R. 38 Calc. 694

PRIOR MORTGAGE.

See MORTGAGE . I. L. R. 38 Calc. 60

PRIVATE AWARD.

See APPEAL . I. L. R. 38 Calc. 143

PRIVATE COMMON DRAIN.

See DRAINAGE . I. L. R. 38 Calc 268

PRIVILEGE.

See MALICIOUS PROSECUTION
I. L. R. 38 Calc. 880

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE, 1908, ss. 105, 108, 109; O XLI, R 23
I. L. R. 33 All. 391

——— judgment of—

See HINDU LAW—WILL.
I L. R. 38 Calc. 188

——— order of His Majesty in—

See LIMITATION ACT (XV OF 1877), SCH. II, ART 180 . I. L R 33 All. 154

PRIVY COUNCIL, PRACTICE OF.

See HINDU LAW—ENDOWMENT.
I. L. R. 38 Calc. 526

——— *Stay of execution of decree pending appeal—Power of High Court where appeal has been admitted by special leave—Civil Procedure Code (Act V of 1908), O XLV, r 13; (Act XIV of 1882), s 608.* The High Court has power, under r. 13 of O XLV of the Civil Procedure Code (Act V of 1908), to stay execution of a decree pending an appeal to His Majesty in Council, in a case where the appeal has been admitted by special leave. NITYA MONI DASSI *v.* MODHU SUDAN SEN (1911) . . . . I. L. R. 38 Calc. 335

PROBATE.

See OFFICIAL TRUSTEE.
I L. R. 38 Calc. 53

See WILL . . I. L. R. 38 Calc. 327

——— *Probate and Administration Act (V of 1881)—Bequest of property to idol—Shebait appointed executor by implication—Letters of administration with will annexed if should be revoked and probate ordered to issue* Where the testator having bequeathed his estate to an idol the *shebait* who was opposed by the testator's heirs was granted letters of administration with the will annexed —*Held*, that although the applicant might probably have been granted probate as being executor by implication, the estate being very small and letters of administration having been actually issued, and the objector who appealed having no sort of interest in the matter, the order of the District Judge should be maintained *Brojo* v. *Raj Kumar, 6 C. W. N. 310*, referred to. KALI CHARAN THAKUR *v.* ANNANDA KANTA BHATTACHARJEE (1910) . . . 15 C. W. N. 1

——— *Probate, application for —Party entitled to object to grant—Attaching creditor has interest sufficient to oppose grant.* Where an application is made for the grant of probate of the will of *A* a judgment-creditor of *A's* son who in

PROBATE—*concld.*

execution has attached the son's interest in the property of his deceased father, has an interest sufficient to justify him in opposing the grant. ARAKAL BASTIAN ANSAP *v.* NARAYANA AIYAR (1910) . . . I. L. R 34 Mad 405

PROCEDURE

See ARBITRATION . I. L. R. 33 All. 743

See PARTITION, SUIT FOR.
I. L. R. 38 Calc. 681

PROFITS.

See OFFERINGS TO DEITY.
I. L. R. 38 Calc 387

PRO FORMÂ DEFENDANT.

See MORTGAGE . I. L. R. 38 Calc. 342

PROHIBITORY ORDER.

——— *Excavation of a tank—Injury to adjoining house—Likelihood of a breach of the peace—Order passed on personal apprehension of the Magistrate without evidence taken or urgency recorded—Criminal Procedure Code (Act V of 1898), s. 144* The petitioner excavated a tank on his own land, adjoining the house of the opposite party, and the latter objected to the excavation on the ground that his house would be thereby rendered unsafe. No likelihood of a breach of the peace appeared from the police report or the written statements of the parties, but the Magistrate made the order under s. 144 of the Criminal Procedure Code without inquiry or recording any urgency: *Held*, that the order was illegal, and that s. 144 was not applicable without inquiry or recording any urgency. KAMINI MOHAN DAS GUPTA *v.* HARENDRA KUMAR SARKAR (1911)
I. L. R. 38 Calc. 876

PROMISSORY NOTE

See EVIDENCE . I. L. R. 33 All. 571

PROMPT DOWER.

See MAHOMEDAN LAW—DOWER.
I. L. R. 35 Bom. 386

PROPAGATION OF DISEASE.

See NUISANCE . I. L. R. 38 Calc. 296

PROSECUTION.

See CRIMINAL PROCEDURE CODE, S. 476.
15 C. W N. 691

PROSTITUTE'S ESTATE.

See HINDU LAW—SUCCESSION.
I. L. R. 38 Calc. 493

PROTECTION ORDER.

——— *Presidency Towns Insolvency Act (III of 1909), s. 25—Previous decisions on applications for interim orders—Discretion—Practice.* It has never been the practice of Commissioners in Insolvency under the Indian Insolvency Act (11 and 12 Vict., c. 21) to consider themselves bound by their previous decisions on applications for *interim* orders when it has been a matter for their discretion, and it by no means follows that because an application has been refused on the first occasion it must also be refused on the second occasion. S. 25 of the Presidency Towns Insolvency Act (III of 1909) clearly intends that while an insolvent deligently performs the duties prescribed by the Act he should not be harassed by execution creditors, and should not be rendered liable to pressure whereby one creditor may get undue advantage over another. The section does not deprive the Court of its discretion in granting or refusing protection, but sub-s (4) indicates clearly the lines along which that discretion should be exercised when a creditor opposes the grant. If an insolvent can produce the certificate referred to, the onus is thrown on the opposing creditor of showing cause why the protection order should not be granted *In the matter of* MEGHRAJ GANGABUX (1910) . . . I. L. R. 35 Bom 47

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——— s. 14, cl. (3)—*Provincial Insolvency Act (III of 1907), s 15—Debtor's application for adjudication, if may be refused because of his acts of bad faith—Adjudication as of course when ss 5 and 6 complied with—Civil Procedure Code (Act XIV of 1882), Chap XX.* Where an application by a debtor to be declared an insolvent being opposed by a creditor, the debtor was examined under s. 14, cl (3) of the Provincial Insolvency Act and the application was dismissed on the ground that one of th creditors mentioned in the application was fictitious, and that the applicant was concealing the real facts —*Held*, that where the requirements of ss 5 and 6 of the Act have been complied with, an order of adjudication should follow almost as a matter of course, and the application dismissed on the grounds stated Whether the debtor has or has not committed acts of bad faith is to be determined by the Court not at the stage when the order of adjudication has to be made, but at the final stage when an application is made for an order of discharge, the provisions of the Provincial Insolvency Act differing in this respect from those of Chap XX of Act XIV of 1882 which have been repealed by the Act. *In re Button, [1907] 1 K. B. 397*, relied on. UDAY CHAND MAITI *v.* RAM KUMAR KHARA (1910) . 15 C. W. N. 213

——— s. 15—*Debtor's application for adjudication—Inability to pay debts if must be proved.* A debtor's application to be adjudicated an insolvent cannot be dismissed on the ground that he could not satisfy the Judge that he was unable to pay his debts. KALI KUMAR DAS *v.* GOPI KRISHNA RAY (1911) . . . . 15 C. W. N. 990

——— s. 15 (2)—*Provincial Insolvency Act (III of 1907), ss. 15, 44, 46—Order for adjudication, if may be refused on ground of improper alienation of property by debtor—Fictitious statement of debt.* Neither an order for adjudication nor one dismissing a petition for declaring a person an insolvent can be treated as a decree between the parties in a

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*contd.*

——— s. 15 (*2*)—*concld.*

contested or uncontested suit, and a creditor who did not oppose the debtor's application to be declared an insolvent need not be added as a respondent in an appeal preferred by the debtor under s. 46 of the Indian Insolvency Act against an order dismissing the application. Where an application by a debtor to be adjudged an insolvent was refused on the ground that the debtor had transferred a portion of his property in lieu of dower and had thus committed an act of bad faith —*Held*, that questions of bad faith or improper dealing by the debtor with his property do not arise for consideration until after the order for adjudication has been made and the insolvent applies for final discharge, and the order for adjudication could not have been refused on the ground stated. *Uday Chand Marti* v. *Ram Kumar Khara, 15 C. W. N 213*, and *Girwardhari* v. *Jai Narain, I. L. R. 32 All. 645*, referred to. *Nathumal* v. *District Judge of Benares, 1. L. R. 32 All. 547*, disapproved That it was open to the opposing creditor to prove that the debt shown to be due to another creditor was fictitious so as to show that the petitioner's debts did not really amount to ₹500 as required by s 5 of the Act. SAMIRUDDIN *v.* KADUMOYI DASI (1910)
15 C. W. N. 244

——— s. 36—*ss 36, 46 (2) 50—Order cancelling alienation of property by insolvent—Transferee, if may appeal—"Aggrieved person"—Receiver if necessary party to appeal—Property outside local limits, if may be dealt with—Calling in the aid of Court in whose jurisdiction property situate* Where an alienation of property made by an insolvent prior to his adjudication as such is annulled under s. 36 of the Provincial Insolvency Act, the transferee is an "aggrieved person" within s. 46 (2) of the Act and is entitled to prefer an appeal against the order. The transferee is moveover a necessary party to the proceeding and entitled to appeal as such. The proper person to make an application under s. 36 is the Receiver in whom the insolvent's properties have vested, and he is a necessary party to such a proceeding and to an appeal arising out of it. But where the application was made and prosecuted in the lower Court by the creditors, the Receiver not having been joined as a party, and the creditors were represented on the appeal and were fully heard in support of the order, and the order proposed to be made did not in any way affect the position of the Receiver, the appeal, to avoid needless delay, was heard and disposed of in the Receiver's absence. Under s. 36 of the Provincial Insolvency Act, the Court had jurisdiction to deal with alienations made by the debtor of properties situated outside its local limits and such jurisdiction is not affected by the provisions of s. 16 of the Civil Procedure Code A proceeding under s 36 of the Act is not in the nature of a suit. It is only an incidental proceeding in the course of a more comprehensive one for adjudging a person an insolvent. Regard being had to the fact that

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*concld.*

——— s. 36—*concld.*

the petitioner under s. 36 lived in Calcutta, that the Court in which the proceedings in insolvency were pending was at Dacca, that the property in question was situated at Monghyr and the transferee and the principal witnesses to the transfer were residents of that place, and that three of the petitioner's own witnesses were residents respectively of Bhagalpur, Burdwan and Calcutta, *held*, that this was a fit case for proceeding under s. 50, and the case was remanded to the lower Court with directions to call in the aid of the Court at Bhagalpur in regard to the matter. LALJI SAHAI SING *v.* ABDUL GANI (1910) . . **15 C. W. N. 253**

——— s. 46 (*4*)—*Limitation Act (IX of 1908), ss. 12 and 29—Appeal—Limitation—Time requisite for obtaining copies.* The Provincial Insolvency Act was intended to be, and is, so far as matters governed by it are concerned, a complete code in itself and contains its own limitation law In computing, therefore, the period of limitation prescribed for presenting an appeal under the said Act the time requisite for obtaining a copy of the order complained of cannot be excluded. *Behari Lall Mookerjee* v. *Mungolanath Mookerjee, I L R. 5 Calc 110*, and *Nagendra Nath Mullick* v. *Mathura Mohun Parhi, 1 L. R 18 Calc. 368*, referred to. *Beni Prasad Kuari* v. *Dukkhi Rai, I. L. R. 23 All. 270*, distinguished. JUGAL KISHORE *v* GUR NARAIN (1911)
I. L. R. 33 All. 738

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——— s 1 (*f*)—*Security on application for order to set aside ex parte decree—Limitation Act (XV of 1877), Sch. II, Art. 164—Notice under s. 248, Civil Procedure Code (Act XIV of 1882)—Execution of process.* When security is not deposited under s. 17 of Act IX of 1887, until after the application to set aside the *ex parte* decree is disposed of, the hearing of the application must be *held* to have been barred. But where no objection is taken on this ground at the hearing, the High Court will not set aside the order in revision. *Ramasuami* v. *Kurisu, I. L. R. 13 Mad. 178*, explained. A process is executed when notice under s. 248, Civil Procedure Code (Act XIV of 1882), has been served and limitation under Sch. II, Art. 164 of the Indian Limitation Act will run from the date of service of such notice. *Bimola Soonduree Dassee* v. *Kalee Kishen Mojoomdar, 22 W. R. 5*, followed. SURYANARAYANA *v.* RAMAMMA (1910)
I. L. R. 34 Mad. 88

——— s. 17.

See LIMITATION ACT, 1908, SCH. I, ART. 164 . . . **15 C. W. N. 102**

——— ss. 23, 25—*Jurisdiction—Suit for sacrificial goat, based on plaintiff's title as shebait to a temple, if may be decided by Small Cause Court.* Where the plaintiff claiming to be the *shebait* of a

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

——— ss. 23, 25—*concld*

goddess sued the defendant for damages for unlawfully taking away a goat sacrified at the altar of the goddess —*Held*, that the question could be properly tried in a Small Cause Court without any elaborate investigation into the general question of the title of the plaintiff as *shebait* The plaint having been returned by the Small Cause Court for presentation to the proper Court, under s. 23 of the Small Cause Courts Act: *Held*, that the High Court had jurisdiction to revise that order either under s. 25 of the Provincial Small Cause Courts Act or under s. 15 of the Charter Act *Quœre* Whether 'decide' in s 25 means 'finally adjudicate.' UMESH CHANDRA PALODHI *v* RAKHAL CHANDRA CHATTERJEE (1911) . **15 C. W. N. 666**

——— Sch. II, Art. 35 (j).

See EXECUTION OF DECREE.
I. L. R. 33 All. 306

PUBLIC NUISANCE.

See TORT . . **I. L. R. 33 All. 287**

PUBLIC AND PRIVATE NUISANCE.

See NUISANCE . **I. L. R. 38 Calc. 296**

PUBLIC POLICY.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S 15B, CL (2).
I. L. R. 35 Bom. 190

PUBLIC SERVANT.

——— unpaid apprentice if—

See PENAL CODE, S 21.
15 C. W. N. 319

PURDANASHIN LADY.

See GUARDIAN . **I. L. R. 38 Calc. 783**

PUTNI.

See PUTNI REGULATION.

——— *Chowkidari chakran and—Resumption and transfer to zemindar—Right of putnidar to settlement—Conditions of settlement—Suit by putnidar to recover—Limitation—Limitation Act (XV of 1877), Sch. II, Arts 142, 144—Putnidar if must register himself in zemindar's sheristha before suing—Purchase of putni in benami by defaulter, if void—Reg. VIII of 1819, s. 9* The effect of the transfer by the Collector to the zemindar of resumed chowkidari chakran lands is not to separate them from the parent estate and grant a new title to them in favour of the proprietor of the estate A *putnidar*, if these lands were included within his *putni*, has the right to recover possession of the lands from the zemindar on condition of his agreeing to a fair and reasonable settlement with the landlord. The terms of the settlement of the resumed chowkidari chakran land with the *putnidar* would depend upon the conditions under which the *putni* was originally created. *Hari Narain Mozumdar* v. *Mukund Lal Mundal, 4 C. W. N. 814*, relied

PUTNI—*concld.*

on A suit by the *putnidar* to recover possession of chowkidari chakran land resumed and transferred to the zemindar is governed by Art. 142, or Art 144 of the Second Schedule of the Limitation Act *Bunwari Mukunda Deb* v *Bidhu Sundar Thakur, I L. R 35 Calc. 346 s c 12 C W N. 459*, followed The absence of registration of the plaintiff's name in the zemindar's sheristha is no bar to such a suit. *Gossain Mungal Doss* v *Roy Dhunput Singh, 25 W. R 152*, disapproved *Chunder Pershad Roy* v. *Shuvadra Kumari Shaheba, I L R. 12 Calc 622, Joy Krishna Mookhopadhya* v. *Sarjannessa, I L R. 15 Calc 345*, relied on The purchase of the *putni* by the defaulting *putnidar* in the *benami* of another in contravention of s. 9 of Reg VIII of 1819 is voidable only and not void. *Matangini Debya* v *Prasanna Moyi Debya, 3 C. L J. 93*, followed HARAK CHAND BABU *v* CHARU CHANDRA SINGHA (1910) . . **15 C. W. N. 5**

PUTNI REGULATION.

——— s. 13 (*4*) —*Putni Regulation (VIII of 1819), s 13 (4)—Dar-putnidar put in possession for paying putni rent—Payment of further arrears when in possession—Payments if first charge on the putni—Bengal Tenancy Act (VIII of 1885), s 171 (1), (b)—Mortgagee's prior right to surplus sale-proceeds—Contract Act (IX of 1872), s 69* Where a *dar-putnidar* having advanced certain arrears of rent due on a *putni* which was already subject to defendant's mortgage, was placed in possession of the *putni* under paragraph 4 of cl. 13 of Regulation VIII of 1819, and then, the plaintiff, an assignee of the *dar-putni*, paid the next three instalments of the putni rent, but failing to pay the fourth instalment, the *putni* was sold under the Regulation: *Held*, that the plaintiff was not entitled to recover out of the surplus sale-proceeds the instalments of rent paid by him when he was in possession of the *putni* That as regards the arrears paid by the *dar-putnidar*, assuming that the amount was a charge on the *putni*, defendant's mortgage of prior date had priority over it. *Quœre* Whether it was open to the *dar-putnidar* to seek the relief provided by s. 171, sub-s (*1*), cl (*b*) of the Bengal Tenancy Act, and if it was, whether the remedy was available after election by him of the remedy under s 13, cl. (*4*) of the Putni Regulation *Held*, further, that the plaintiff could not claim on the basis of s. 69 of the Contract Act RAMJIBAN BHADRA *v.* TAZUDDIN KAZI (1911) . . **15 C. W. N. 404**

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RAILWAY COMPANY.

See CONTRACT . **15 C. W. N. 981**

RAILWAYS ACT (IX OF 1890).

——— s. 47—*General rules published in Gazette of India—Adoption by a Railway Company—Sanction—Publication.* The general rules framed by the Governor-General in Council and

RAILWAYS ACT (IX OF 1890)—*concld.*

——— s. 47—*concld.*

published in the *Gazette of India* by notification, dated the 3rd July, 1902, do not become operative as the rules of any individual Railway Company merely upon their adoption by the Company It must be shown that the particular Railway Company made rules and that those rules have received the sanction of the Governor-General in Council and have been published in the manner prescribed by the Act HARI LAL SINHA *v* THE BENGAL NAGPUR RAILWAY CO (1910) . **15 C W N 195**

——— s. 77—*Suit against railway company—Notice—Limitation—Limitation Act (IX of 1908), Sch I, Art 31—Waiver of notice* Certain goods were despatched on the 26th of March, 1908, from Bombay to Gazipur The goods were lost in transit while in possession of the Great Indian Peninsula Railway Company The consignee made a claim against the East Indian Railway Company, as the result of which he was offered a certain sum as compensation by the assistant traffic manager of that company, who stated that he did so with the authority of the deputy traffic manager of the Great Indian Peninsula Railway Company There was, however, no proof that any such authority had been given, and the offer was refused. On the 9th August 1909, the consignee brought a suit against the Great Indian Peninsula Railway Company for damages for the loss of his goods, but did not give the notice required by s. 77 of the Indian Railways Act, 1890. He claimed that certain conditions printed on the back of the railway receipt relieved him of the necessity of giving notice under s 77. *Held*, that this was not so : nor did the action of the assistant traffic manager of the East Indian Railway Company amount to a waiver of notice. The suit was also barred by limitation under Art. 31 of the first Schedule to the Indian Limitation Act, 1908. GREAT INDIAN PENINSULA RAILWAY COMPANY *v.* GANPAT RAI (1911) . **I. L. R. 33 All 544**

RATEABLE DISTRIBUTION.

See RECEIVER . . **15 C. W. N. 925**

——— *Application for, not considered to be application for execution—Attachment before judgment is not application for execution—Decree-holder—No right to rateable distribution unless he has applied for execution* Only a decree-holder who has applied for execution can claim a right to rateable distribution. Such a right is not conferred upon a plaintiff who has merely obtained an attachment before judgment and has not applied for execution under s. 230, Civil Procedure Code. *Amara Veerayya* v *Annamala Chetty Pichayya, I. L. R. 31 Mad 502*, overruled. An attachment before judgment is in no sense an application for execution. A mere application for rateable distribution which does not comply the requirements of s. 235 in form or substance cannot be considered to be an application for execution within the scope of s. 295, Civil Procedure Code. *Sewdut Roy* v. *Sree Canto Marty, I L. R 33 Calc 638*, distinguished *Pallonji Shapurji Mistry* v. *Edward Vaughan Jordan, I. L. R 12 Bom. 400*, followed. ARUNACHELLAM CHETTIAR *v.* HAJI SHEEK MEERA ROWTHAR (1910) **I. L. R. 34 Mad. 25**

RAYATI LEASE.

See LANDLORD AND TENANT **I. L. R. 38 Calc. 432**

RECEIVER.

See BUSTEE LAND. **I. L. R. 38 Calc. 714**

1. ——— Receiver, appointment of—*Mortgage suit—Sale, appointment after—Receiver, if may be appointed of property in hand of common manager—Civil Procedure Code (Act V of 1908), O. XL, r 1, sub-r (2)—Bengal Tenancy Act (VIII of 1885), s. 95* A mortgage suit does not necessarily terminate with the sale, and a Receiver may be appointed after the sale, pending application to set it aside *Wills* v *Loff, 38 Ch D. 197*, distinguished. A Receivor may very well be appointed under O 40, r. 1, sub-r. (2), Civil Procedure Code, in respect of property in the hands of a common manager appointed under s 95 of the Bengal Tenancy Act. MADANESWAR SINGH *v* MAHAMAYA PROSAD SINGH (1911) . . **15 C W N. 672**

2. ——— Receiver, suit against—*Leave of Court, if condition precedent to suit—Stay of proceedings.* Where a suit has been instituted against a Receiver without previously obtaining the leave of the Court which appointed him, it is open to the Court to stay proceedings for a reasonable time so as to enable the plaintiff to apply for leave to proceed with the suit The consent of the Court which appointed the Receiver is not a condition precedent to the right to bring an action against the Receiver. *Pramutha Nath Gangooly* v. *Khetra Nath Banerjee, I. L. R. 32 Calc 270 s.c. 9 C W. N. 247*, dissented from. Where property in the hands of a receiver is intended to be affected by the result of the litigation, the Receiver is a proper and necessary party to such a suit. *Jotindra Nath Choudhry* v. *Sarfaraj Mia, 14 C W. N. 653*, followed *Muller* v *Ram Ranjan Chuckerbutty, I L R. 10 Calc. 1014, Chartered Bank* v *Hurish Chunder Neogy, 7 C. W. N. xv*, and *Kumar Suttya Suttya Ghoshal* v *Rani Golap Moni Debi, 5 C. W. N 27*, distinguished. BANKU BEHARI DEY *v.* HARENDRA NATH MUKERJEE (1910) . . . . **15 C. W N. 54**

3. ——— Receiver, application to execute decree against—*Application for rateable distribution—Property sold at the instance of another creditor with leave—Leave if still necessary—Leave, if may be obtained after application preferred—Civil Procedure Code (Act XIV of 1882), s. 272, order under, if leave—Civil Procedure Code (Act V of 1908), s. 73.* The fact that leave had already been granted to the execution-creditor at whose instance property in the hands of a Receiver was sold, does not dispense with the necessity of other execution-creditors obtaining such leave to prosecute their applications under s. 73 of the Civil Procedure Code

RECEIVER—*concld.*

for rateable distribution of the assets ; for the funds are held by the Court for the benefit of the Receiver who would be entitled as a matter of right to take out any surplus left after satisfying the creditors who have obtained such leave, and apply it for the purpose of the litigation in which he was appointed Courts have been generally reluctant to allow execution to proceed against properties in the hands of the Receiver until leave has expressly been granted for this purpose. A prohibitory order under s. 272 of Act XIV of 1882 on the Receiver cannot be construed as leave granted to the decree-holder to proceed against properties in his hand In the circumstances of the case the High Court *held* that the application should not have been dismissed because no such leave had been obtained but that an opportunity should be given to the petitioner even at this late stage to obtain the requisite leave *Banku Behari Dey* v. *Harendra Nath Mukerjee, 15 C. W. N. 54*, followed. *Pramatha Nath Gangooly* v. *Khetra Nath Banerjee, I. L. R. 32 Calc. 270 s.c. 9 C. W. N. 247*, dissented from SARAT CHANDRA BANERJEE *v.* APURBA KRISHNA ROY (1911) **15 C. W. N. 925**

RECOGNITION.

See HINDU LAW—MARRIAGE. **I. L. R. 38 Calc. 629**

RE-CONSTRUCTION.

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 3 (7), 96. **I. L. R. 35 Bom. 412**

RECURRING CHARGE.

See MAINTENANCE ALLOWANCE. **I. L. R. 38 Calc. 13**

REDEMPTION.

See CIVIL PROCEDURE CODE, 1882, SS. 13 AND 43 . . **I L R. 33 All. 302**

See MORTGAGE. **I. L. R. 33 All. 97 ; 393 ; 434**

REDEMPTION SUIT.

See CIVIL PROCEDURE CODE, 1908, S. 11, EXPL. IV . **I. L. R. 35 Bom. 507**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879). **I. L. R. 35 Bom. 204**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, S. 10A . **I. L. R. 35 Bom. 231**

REGISTRATION.

See REGISTRATION ACTS.

See OUDH ESTATES ACT (I OF 1869). **I. L. R. 33 All. 344**

REGISTRATION ACT (III OF 1877).

——— **ss. 3, 17**—*Document creating right to benefits to arise out of land compulsorily registrable—Evidence, such document not admissible in, if unregistered—Possession under such document only.* First defendant obtained possession of certain lands under an unregistered instrument which gave him the right to apportion future rents (over R100 in value) towards an antecedent debt due to him : *Held*, that the instrument created a right to benefits to arise out of land, and was compulsorily registrable under s 17, Indian Registration Act. *Venkaje Babaji Naik* v. *Shidramappa Balappa Desai, I. L. R. 19 Bom. 663*, followed. *Misri Lal* v *Mozhar Hussain, I. L. R 13 Calc. 262*, distinguished *Banshidhar* v. *Sant Lal, I. L. R. 10 All 133*, distinguished. Such a document if not registered cannot be admitted in evidence. Where defendant's possession arose only out of such an unregistered document he cannot otherwise prove that he was not a trespasser. MANGALASWAMI *v.* SUBBIA PILLAI (1910) **I. L. R. 34 Mad. 64**

——— **s. 17.**

See LIMITATION ACT, 1877, SCH. II, ARTS. 132, 144 . **I. L. R. 35 Bom. 438**

——— **s. 17, cl. (*d*)**—*Reservation of annual rent not necessary to bring the document within proviso to cl. (d) of s. 17.* In order to exempt a lease from Registration under the proviso to cl. (*d*) of s. 17 of the Registration Act, it is not necessary that an annual rent should be reserved The proviso simply means that if an annual rent is reserved, it should not exceed fifty rupees. VENKATASAMI CHETTI *v.* SUPPA PILLAI (1910) **I. L R. 34 Mad. 90**

——— **ss. 17, 49.**

See OUDH ESTATES ACT (I OF 1869). **I L. R. 33 All. 344**

——— *Registration—Evidence—Petition of compromise unregistered and not embodied in any decree of Court. Held*, that a petition containing the terms of a compromise between parties to a Revenue Court suit, which had been filed in the Court, but was unregistered and had not been acted upon or embodied in the Revenue Court's decree, could not in a subsequent civil suit be used as evidence of the terms of such compromise, the property purporting to be dealt with thereby being above the value of R100. *Sadar-ud-din Ahmad* v. *Chajju, I. L. R. 31 All. 13*, and *Kashi Kunbi* v. *Sumer Kunbi, I. L. R. 32 All. 206*, followed. BHAGWAN SAHAI *v.* HAR CHAIN (1911) **I L. R. 33 All. 475**

REGISTRATION ACT (XVI OF 1908).

——— **s. 49**—*Registration—Evidence of title—Petition of compromise in a mutation case and order thereon. Held*, that a petition of compromise filed in a mutation case before a Court of Revenue and the order of the Court thereon can neither effect nor prove a conveyance of the immovable property to which the mutation proceedings may relate. *Pranal Anni* v. *Lakshmi Anni, I. L. R. 22 Mad. 508, Raghubans Mani Singh* v. *Mahabir Singh, I. L. R. 28 All. 78, Kashi Kunbi* v. *Sumer Kunbi, I. L. R. 32 All. 206, Biraj Mohini Dasee* v.

REGISTRATION ACT (XVI OF 1908)—*concld.*

——— s. 49—*concld.*

Kedar Nath Karmakar, I. L. R. 35 Calc. 1010, Muthayya v. *Venkataratnam, I. L. R. 25 Mad 553,* and *Sadar-ud-din Ahmad* v. *Chajju, I. L R 31 All. 13,* referred to RUSTAM ALI KHAN *v* GAURA (1911) . . . . . **I. L R. 33 All. 728**

REGULATION.

——— 1822—VII.

See PRE-EMPTION . **I. L. R. 33 All. 196**

——— 1832—VII, s. 9.

See HINDU LAW—CONVERSION. **I. L. R. 33 All. 356**

RE-INSTATEMENT.

See MUKTEAR . **I. L. R. 38 Calc. 309**

RELEASE.

——— Partition—*Undivided brothers—Instruments whereby co-owners divide property in severalty—Release—Stamp.* Instruments whereby co-owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother, the manager of the family, as his share in the family property, moveable and immoveable, a certain ca h and bonds for debts due to the family, and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining family property by the latter handing over to the former securities for money A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition *Held,* that the documents were instruments of partition. *In re* GOVIND PANDURANG KAMAT (1910) . . **I. L. R. 35 Bom. 75**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

——— ss. 7 and 10—*Constitution of Committee under—Validity of Acts done by incomplete committee* One of a committee of three members appointed under s 7 of Act XX of 1863 (Religious Endowments Act) died and the vacancy thus caused was not filled up in accordance with s. 10 of the Act The remaining two members purported to perform the functions of the committee : *Held,* that the remaining two members cannot be said to be a committee at all and cannot perform any of the functions of the original committee. *Per* ARNOLD WHITE, *C. J.* —Ss. 7 and 10 of the Act are imperative or obligatory and not merely directory. The law governing corporate bodies with regard to the capacity of the members of the corporate bodies to act is not applicable to the case of the statutory body appointed under s. 7 of the Religious Endowments Act *The King* v. *Bellringer, 4 T R. 810, and 100 Eng. Rep. 1315,* distinguished. *Per* ABDUR RAHIM, *J.*—The intention of the Legislature is that a committee appointed under the Act shall not consist of less than the number originally appointed. *Anantanarayana Ayyar* v. *Kuttalam Pillai, I. L. R. 22 Mad. 481,* distinguished. SANTHALVA *v.* MANJANNA SHETTY (1910) **I. L. R. 34 Mad. 1**

RELINQUISHMENT.

See LANDLORD AND TENANT. **15 C. W. N. 680**

REMAND.

See APPEAL . . **15 C. W. N. 830**

See CIVIL PROCEDURE CODE, 1908, ss. 105, 108, 109; O. XLI, R. 23 **I. L. R. 33 All. 391**

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 25 . . **15 C. W. N. 575**

RE-MARRIAGE.

See GUARDIAN—HINDU WIDOW. **I. L. R. 38 Calc. 862**

RENT.

——— Maintenance Grant—*Baradaran Jagir, Orissa—Landlord and Tenant—Grantor and Grantee—Killajat estates in Orissa—"Light tribute" as rent—Assessment of rent by Settlement Officer—Finality of decision—Bengal Tenancy Act (VIII of 1885), ss. 3 (5), 104, 107—Bengal Tenancy Amendment Act (Ben III of 1898), s 9—Second Appeal—Findings of Fact—Inference of Law* In Orissa, a proprietor of an estate governed by the law of primogeniture made a grant of certain villages as *baradaran jagir, khorposak niskar,* etc , for the support of the younger brothers and other nearer relatives of the family ; it was not transferable, but was subject to resumption on failure of direct heirs, and the grantee had to pay to the grantor a proportionate share of the Government revenue :—*Held,* that the amount payable by the grantee to the grantor under such conditions constituted rent within the meaning of s. 3 (5) of the Bengal Tenancy Act, 1885, and the grantees were tenants and not co-proprietors. *Chunder Kant Chuckerbutty* v. *Mahomed Hossein, 6 W R., Act X, 1,* referred to Where a Settlement Officer made an assessment of rent under s. 104 of the Bengal Tenancy Act (VIII of 1885), which was not appealed against under s 108 of the Act :—*Held,* that the decision of the Settlement Officer was, in view of s 107 of the Bengal Tenancy Act, 1885, read with s. 9 of Bengal Tenancy Amendment Act, 1898, final. Though the High Court, in second appeal, cannot interfere with findings of fact, it can interfere with an inference of law drawn from the facts

RENT—*concld*

found. DWARKA NATH BIDYADHAR *v.* DAMBARUDHAR MAHAPATRA (1910) . **I. L. R. 38 Calc. 278**

RENT DECREE.

See EXECUTION OF DECREE **I. L. R 38 Calc. 288**

RENT-FREE GRANT.

See AGRA TENANCY ACT (II OF 1901), S 158 . . **I L R. 33 All 553**

RENT RECOVERY ACT (BENG. X OF 1859).

——— **s. 109.**

See JURISDICTION OF HIGH COURT. **I. L. R. 38 Calc 832**

REPEAL.

See STATUTE, CONSTRUCTION OF **I. L. R. 35 Bom. 307**

REPUDIATION OF WILL.

See JURISDICTION **I. L. R 34 Mad. 257**

RE-PURCHASE.

See SALE WITH AN OPTION OF RE-PURCHASE . **I. L. R. 35 Bom. 258**

RESCUE FROM LAWFUL CUSTODY.

See WARRANT . **I. L. R. 38 Calc. 789**

RESIDENCE.

——— **notification of—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 565. **I. L R. 35 Bom. 137**

RES JUDICATA.

See AGRA TENANCY ACT (II OF 1901), SS 10, 202 . **I. L. R. 33 All. 507**

See AGRA TENANCY ACT (II OF 1901), S. 63 . . **I. L. R. 33 All. 453**

See AWARD . **I. L. R. 33 All. 490**

See CIVIL PROCEDURE CODE, 1882, SS 13 AND 43 . . **I L. R. 33 All. 302**

See CIVIL PROCEDURE CODE, 1882, SS. 13, 44 . . **I. L. R. 35 Bom. 297**

See CIVIL PROCEDURE CODE, 1882, SS. 13, 539 . . **I. L. R. 33 All. 752**

See CIVIL PROCEDURE CODE, 1908, S. 11. **I. L. R. 33 All. 51; 151**

See CIVIL PROCEDURE CODE, 1908, S. 11, EXPL IV . **I. L. R. 35 Bom. 507**

See CIVIL PROCEDURE CODE, 1908, S. 11, EXPL VI . **I. L R. 33 All. 493**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 47, O. XXI, RR. 95, 98 **I. L. R. 34 Mad. 450**

See DECREE . **I. L. R. 35 Bom. 245**

RES JUDICATA—*concld*

See EVIDENCE ACT (I OF 1872), S 44. **I. L. R. 33 All. 143**

See LIMITATION . **I. L. R. 33 All. 264**

1. ——— *Res judicata—Cause of action, how to be determined—Civil Procedure Code, Act XIV of 1882, s. 103—Bar of suit under s. 158—Scope of.* The plaintiff in the present suit sued one Srinivasa Aiyar in Original Suit No 7 of 1892 for on the ground that he was prevented from entering on his property and prayed for an injunction restraining the said Srinivasa Aiyar from obstructing plaintiff In the present suit plaintiff sued the successors in title of Srinivasa Aiyar alleging that Srinivasa Aiyar wrongfully got into possession prior to his filing Original Suit No 7 of 1892 and prayed for a declaration of title and possession :—*Held*, that the present suit was barred as *res judicata*. Where the causes of action are substantially the same, the form in which they are stated or the difference in the frame of the relief will not affect the question. *Haji Hasam Ibrahim* v. *Mancharam Kalvandas*, *I. L. R 3 Bom. 137*, followed. *Jibanti Nath Khan* v. *Shib Nath Chakerbatty*, *I. L R 8 Calc 819*, distinguished. A Court is not precluded from comparing the issues in the two cases and from considering what the plaintiff had to prove or undertook to prove in either case, in considering whether the causes of action are identical *Chand Kour* v. *Partab Singh*, *I L. R 16 Calc. 98*, explained. Where in a suit at an adjourned hearing neither the plaintiff nor his pleader appears, the case may be dealt with under s. 158 of the Civil Procedure Code, 1882. There is nothing in the language of that section which precludes its application to such a case. *Srimant Sagajirao* v *Smith*, *I. L. R. 20 Bom 736*, dissented from. NAGANADA AIYAR *v.* KRISHNAMURTI AIYAR (1910) **I. L. R. 34 Mad. 97**

2. ——— *Civil Procedure Code (Act V of 1908), s 11—Decision of first suit on merits but its dismissal for not paying the deficient Court-fees—Second suit for trial on same merits.* A previous suit between the parties failed on the ground that the claim was undervalued and the plaintiff when called upon to pay the deficient Court-fees omitted to do so There were issues on merits also decided. In a subsequent suit for trial on the same merits, the decision in the first suit was pleaded as *res judicata Held*, that the rejection of the suit on the ground of undervaluation at any stage of it did not make it *res judicata* for the purposes of a subsequent suit on the same cause of action or litigating the same title *Held*, further, that the dismissal of the suit on the ground of undervaluation having been sufficient by itself, the findings on the issue on the merits were not necessary for the decision of the suit and could not have the force of *res judicata* IRAWA KOM LAXMANA MUGALI *v.* SATYAPPA BIN SHIDAPPA MUGALI (19 0) . . **I. L. R. 35 Bom. 38**

RESTITUTION OF CONJUGAL RIGHTS.

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 17 (VI) . **I. L. R. 33 All. 767**

RESTITUTION OF CONJUGAL RIGHTS —*concld.*

See MAHOMEDAN LAW—DOWER
I. L. R 35 Bom. 386

See MARRIAGE . **I. L. R 33 All. 90**

RESTRAINT OF PROCEEDINGS.

See INJUNCTION . **I. L. R. 38 Calc. 405**

RESULTING TRUST.

See LIMITATION ACT (XV OF 1877), S. 10.
I. L. R. 35 Bom. 49

RESUMPTION.

See CIVIL PROCEDURE CODE, 1882, S 424.
I. L R. 35 Bom. 362

RE-UNION.

See HINDU LAW—PARTITION.
I. L. R. 35 Bom. 293

REVENUE RECORD.

——— entry in—

See MAMLATDARS' COURTS ACT (BOM II OF 1906), SS 19, 23.
I. L. R. 35 Bom 487

REVENUE SALE LAW (BENG. ACT XI OF 1859).

See SALE FOR ARREARS OF REVENUE
I. L. R. 38 Calc. 537

——— s. 33—*Revenue Sale Law (Act XI of 1859), ss. 5, 28, 33—Exemption in respect of land revenue—Sale of property for arrears other than land revenue for which certificate proceedings initiated—Formal order of exemption, absence of—Special notice under s 5, necessity for* Where after an estate has been advertised for sale for arrears of land revenue, the Collector, upon the defaulter's application for exemption, ordered that the arrears "may be accepted if paid to-day," and the plaintiff duly paid the amount and the same was received and acknowledged, but nevertheless the property was put up to sale on account of certain arrears of embankment charges, the intention to recover which by sale under Act XI of 1859 did not appear to have been conveyed to the defaulter by the Collectorate mohurrir when enquiries were made of him as to the amount to be deposited, and which arrears the Collector has already elected to recover by the certificate procedure from the defaulter and a usufructuary mortgagee from him :—*Held*, that the Collector was not justified in putting up the property for sale on account of these arrears, without serving special notice on the defaulter under s. 5 of Act XI of 1859, on the mere ground that no special exemption order had been made. There were in the circumstances no arrears for which the property could be sold. *Gobind Lal Roy* v. *Ramjanam Misser, I. L. R. 21 Calc. 70, 83, Bunwari Lall* v. *Mahabir Prasad, 12 B. L. R. 297, Deonandan Singh*, v. *Manbddh Singh, I. L R 32 Calc 111*, referred to. HARI DASI DEB *v.* DHIRAJ CHANDRA BOSE (1910)
15 C. W. N. 38

REVENUE SALE LAW (BENG. ACT XI OF 1859)—*contd.*

1. ——— s. 37—*Public documents, chittas prepared for distributing public revenue on partition of an estate if—Revenue Sale Law (Act XI of 1859), s 37—Protected interest—Portion of taluk existing at Permanent Settlement but transferred and held under different names if protected.* When a portion of a taluk existing from before the time of the Permanent Settlement is transferred and the said portion is subsequently held at a proportionate *jama* under a name different from the original taluk but the subsequent transfers and descent thereof can be traced from the original taluk, the portion so transferred is also protected under s 37 of Act XI of 1859. NOBENDRA KISHORE ROY *v.* DURGA CHARAN CHOWDHURY (1910)
15 C. W. N. 515

2. ——— "*Purchaser*" *if means "certified purchaser"—Person in adverse possession for more than 12 years, if may be ejected—Thak map, evidence of possession and so of title—Presumption backward when proper.* The word "purchaser" in s 37 of Act XI of 1859, does not mean the "certified purchaser" only, and the "certified purchaser" is not the only person who can sue an incumbrancer for ejectment under that section. An adverse possessor is an incumbrancer within the meaning of that section. The Thak map is used primarily as evidence of possession of the party who relies thereon, and as soon as it is established from the Thak map that the claimant was in possession at that time such possession may legitimately be attributed to title. Where the Thak map, however, showed the lands as included in the plaintiff's estate but to be in possession of the defendant, this principle did not apply. Although it cannot be affirmed as a proposition of law that merely because certain specified lands were included in an estate at the time of the Thak survey in 1859, they must have been included within that estate at the time of the Permanent Settlement, yet it is open to the Court to draw such inference from all the surrounding circumstances. The land in dispute in this case not being *chur* land and its history not showing that its area or situation had in any way been changed from the time of the Permanent Settlement : *Held*, that the Courts below were justified in inferring from all the circumstances of the case that the land (shown in the Thak map of 1859, as within a certain estate) was included within that estate at the time of the Permanent Settlement *Jayadindra Nath Roy* v. *The Secretary of State, I. L. R. 30 Calc. 291 · s.c. 7 C. W. N 193*, distinguished. MOIZUDDI BISWAS *v.* ISHAN CHANDRA DAS (1910)
15 C. W. N. 706

3. ——— *Revenue Sale Law (Act XI of 1859), s. 5—The question of notice if may be raised after confirmation of sale—Laches, if can arise without knowledge—Mortgagee in possession, a trustee, default in payment of revenue and subsequent purchase of mortgaged property, mortgagee if bound to account—Co-sharer, if may make default*

REVENUE SALE LAW (BENG. ACT XI OF 1859)—*concld.*

——— s. 37—*concld.*

and purchase at revenue sale—Trustee for co-sharer, position of Although the question as to proper service of notice cannot be raised after confirmation of a sale under Act XI of 1859, that is only so far as setting aside the sale on the ground of irregularity is concerned, but it does not prevent the Court from ascertaining for other purposes whether notice was so served as to fix on the party served the knowledge of it Defendant was the mortgagee of a share belonging to some of the plaintiffs out of a revenue-paying estate Defendant was bound, under the mortgage-contract, to pay his share of the land revenue for the portion of the estate held by him. In one of these kists he made an over-payment of R3-6 as. which was credited as an excess in the ijmali account. On a subsequent occasion the other co-sharers took advantage of the excess standing to the credit of the estate and paid only the balance remaining due from them. After this the defendant on one occasion paid R3 less than he was bound to pay without however asking to be credited with the excess paid by him previously. Some days after this short payment the plaintiffs paid their share of the revenue. For the short payment thus made by the defendant the estate was subsequently sold under XI of 1859 and purchased by the defendant: *Held*, that, in the absence of evidence that they knew of the default, the plaintiffs could not be held guilty of laches in not seeing whether there was a deficit, as laches signify knowledge or at least such abstinence from legitimate enquiry as to amount to constructive notice. That the defendant as mortgagee could not take advantage of his purchase as against his mortgagors. A mortgagee in possession is for certain purposes a trustee for his mortgagors and cannot take advantage of that position to the detriment of his mortgagors. *Nawab Sidhee Nuzur Ali Khan* v. *Ojodhyaram, 10 Moo. I. A. 540*, referred to. Where a co-sharer who makes default in paying up his share of the land revenue subsequently purchases the property at a sale for arrears of revenue the purchase enures to the benefit of all co-sharers. *Carter* v. *Home, 1 Eq Ca. Ab. 7, Khadim* v. *Sheomung, S. D. N. W. P. 1854-57, p. 164 (1855)*, referred to. A trustee for co-sharer cannot derive any benefit for himself at the expense of the co-sharers of the *cestui que trust* by committing a breach of trust. JANKI SINGH *v* DEBINANDAN PROSAD (1910) . . **15 C. W. N. 776**

REVERSIONER.

See CONSENT-DECREE.
I. L. R. 38 Calc. 639

See SPECIFIC RELIEF ACT (I OF 1877), S. 42 . . **I. L. R. 33 All. 430**

See SUCCESSION CERTIFICATE ACT, S 4.
15 C. W. N. 1018

——— suit by—

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 141 . **I. L. R. 33 All. 312**

REVIEW.

See ARBITRATION BY COURT.
I L. R. 38 Calc. 421

See CIVIL PROCEDURE CODE, 1908, O. XLVIII, R. 1 . **I. L. R. 33 All. 566**

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 38 Calc. 526

REVIEW IN CRIMINAL CASES.

——— *Power of a Division Bench of the High Court to review its judgment discharging a Rule before signature—Discharge of the accused in a part-heard case for absence of remaining witnessss without consideration of the evidence already on the record—Criminal Procedure Code (Act V of 1898), ss. 253, 369—Practice.* It is competent to a Division Bench of the High Court, which has erroneously discharged a rule on a point of law and a misapprehension of the facts in connection therewith to review its judgment before it has been signed. *In the matter of the petition of Gibbons, I. L. R. 14 Calc. 42, Queen-Empress* v. *Lalit Tiwari, I. L. R. 21 All. 117*, referred to. *Queen-Empress* v. *Fox, I. L. R. 10 Bom. 176*, dissented from. Where a Magistrate, after some of the prosecution witnesses had been heard by another Bench of Magistrates, discharged the accused because the other witnesses were not present, the High Court set aside the order of discharge and directed him to dispose of the case after argument with reference to the evidence already on the record. AMODINI DASEE *v.* DARSAN GHOSE (1911)
I. L. R. 38 Calc. 828

REVISION.

See APPEAL . **I. L. R. 38 Calc. 717**

See CIVIL PROCEDURE CODE, 1908, S, 115.
I. L. R. 33 All. 512

See JURISDICTION OF HIGH COURT.
I. L. R. 38 Calc. 832

See MAMLATDARS' COURTS ACT (BOM. II OF 1906), SS. 19, 23.
I. L. R. 35 Bom. 487

See PENAL CODE, S. 280.
15 C W. N. 835

See SPECIFIC RELIEF ACT (I OF 1877), S. 9.
I. L. R. 33 All. 647

——— grounds for—

See CRIMINAL REVISION.
I. L. R. 38 Calc. 933

RIGHT OF OCCUPANCY.

See OCCUPANCY HOLDING.

See OCCUPANCY TENANT.

——— acquisition of—

See LANDLORD AND TENANT.
I. L. R. 38 Calc. 432

RIGHT OF PRIVATE DEFENCE.

See SEARCH WITHOUT WARRANT.
I. L. R. 38 Calc. 304

RIGHT OF REPLY.

See APPEAL . I. L. R. 38 Calc. 307

——— Appeal—*Right of reply—Duty of Appellate Court to determine accomplice character of Evidence—Criminal Procedure Code (Act V of 1898), s. 421—Practice.* The appellant has a right of reply to the Crown on the hearing of an appeal. *Promoda Bhusan Roy* v *Emperor, 11 C. W. N. xlii,* followed The Appellate Court is bound to find specifically whether witnesses said to be accomplices are so or not, and to weigh their evidence accordingly AMANAT SARDAR *v.* NAGENDRA BISWAS (1910) . . . . I. L. R. 38 Calc. 307

RIOT.

See CRIMINAL PROCEDURE CODE. S 526. I. L. R 33 All. 583

RIOTING.

See SEARCH WITHOUT WARRANT I. L. R. 38 Calc. 304

RITES AND CEREMONIES

See HINDU LAW—MARRIAGE. I L. R. 38 Calc. 700

ROAD AND PUBLIC-WORKS CESS ACT.

See CESS ACT.

ROYALTY.

See MINES . I. L. R. 38 Calc 372

RULES OF EVIDENCE.

See APPEAL . I. L. R. 38 Calc. 143

S

SACRIFICE OF GOAT.

——— suit for—

See PROVINCIAL SMALL CAUSE COURTS ACT, s. 23 . 15 C. W. N. 666

SALE.

See CONSTRUCTION OF DOCUMENT I. L. R. 33 All. 337 ; 585

See CONTRACT . I. L. R. 33 All. 166

See EXECUTION OF DECREE I. L. R. 38 Calc. 622

See MORTGAGE . I. L. R. 38 Calc. 923

See TRANSFER OF PROPERTY ACT, s. 55. 15 C. W. N. 655

See VENDOR AND PURCHASER I. L. R. 35 Bom. 269

——— confirmation of—

See CIVIL PROCEDURE CODE, 1882, s. 316. I. L. R. 33 All. 63

See PRE-EMPTION . I. L. R. 33 All. 45

SALE—*concld.*

——— contract of—

See VENDOR AND PURCHASER, I. L. R. 38 Calc. 458

——— necessity of—

See MAHOMEDAN LAW—MINOR. I. L. R. 35 Bom. 217

——— Sale with an option of re purchase—*Suit by vendor's grandson against the vendee's daughter-in-law—Covenant to re-purchase purely personal.* A deed of sale with an option of re-purchase contained the following clause :—" I have given the land into your possession ; if perhaps at any time I require back the land I will pay you the aforesaid R600 and any money you may have spent on bringing the land into good condition and purchase back the land." In a suit brought 35 years after execution of the deed by the grandson of the vendor against the daughter-in-law of the vendee to exercise the option of re-purchase : —*Held,* that the covenant to re-purchase was purely personal and the suit was not maintainable. GURUNATH BALAJI *v.* YAMANAVA (1911) I. L. R. 35 Bom. 258

SALE-DEED.

See EVIDENCE ACT (I OF 1872), S. 92, PROV. I . I. L. R. 35 Bom. 93

See LIMITATION ACT, 1877, SCH. II, ARTS. 132, 144 . I. L. R. 35 Bom. 438

SALE FOR ARREARS OF REVENUE.

See REVENUE SALE LAW.

——— *Revenue Sale Law (Act XI of 1859)—Liability of auction-purchaser in respect of payment of arrears of revenue—Appropriation of payment to particular kist, and acceptance and acknowledgment of Treasury Officer—Subsequent appropriation by Treasury Officer to earlier kist—Sale for arrears so created, suit to set aside—Contract Act (IX of 1872), ss. 59, 60.* Where the proprietor of an estate made a payment in respect of arrears of revenue, and in the document which accompanied the payment to the Government, expressly appropriated it to the satisfaction of a particular kist, and the money was accepted and acknowledged by the Treasury Officer as paid on that account : *Held,* it was not in the power of one of the parties to the transaction, without the assent of the other, to vary the effect of transaction by altering the appropriation in which both originally concurred. After a payment had been so specially appropriated and accepted as paid in respect of a kist due in January 1902, the Treasury Officer applied part of it to the satisfaction of an earlier kist due in September 1901, and only paid the remainder towards the January kist, with the result that an arrear was created in the January kist to which the payment had been wholly appropriated and a sale took place for such arrear In a suit to set aside the sale :—*Held* (reversing the decision of the High Court), that no arrears in respect of the January kist were really due at the date of the sale which was therefore without jurisdiction and

SALE FOR ARREARS OF REVENUE —*concld.*

invalid. *Semble* Ss. 59 and 60 of the Contract Act (IX of 1872), relating to the appropriation of payments might have been applicable to the case, if the parties to the transaction had not by their own actions placed the matter beyond doubt MAHOMED JAN *v* GANGA BISHUN SINGH (1911)
I. L. R. 38 Calc. 537

SALE IN EXECUTION OF DECREE.

1. ——— Fresh proclamation—*Civil Procedure Code (Act XIV of 1882), ss 287, 291—Execution-sale proclaimed by July 13th, and held on July 20th without fresh proclamation—Sale upheld.* A sale in execution was not in contravention of ss 287 and 291, Civil Procedure Code, merely because, having been proclaimed to be held at the monthly sale commencing on July 13th, it was not held till July 20th, and then without a fresh proclamation. It appeared that July 13th was the day on which the monthly sales were to commence, that owing to the presiding officers' absence they did not actually begin till the 17th that on that day a postponement was refused, and that the monthly sale was continued on the 20th. RANG LAL SINGH *v* RAVANESHWAR PERSHAD SINGH (1911)
L. R. 38 I. A. 200

2. ——— Claim or objection—*Civil Procedure Code (Act V of 1908), s. 47, O XXI, r 58, s 115—Claim or objection by purchaser during attachment in execution of money-decree, if may be entertained—High Court, Revisional jurisdiction exercised on appeal where order was without jurisdiction.* Where after the attachment of the judgment-debtor's property in execution of a money-decree, the property was sold in execution of a mortgage-decree and the purchasers applied to the Court for exempting the property from sale:—*Held*, that the purchase being subsequent to the attachment, the application could not be treated as a claim or objection under O XXI, r. 58 of the Civil Procedure Code. That as the purchasers were really setting up an antagonistic title based on their purchase, they could not be said to be representatives of the judgment-debtors for the purposes of s 47 of the Code. An order exempting the property from sale on the application of the purchasers, not being contemplated by any provision in the Code was without jurisdiction and can be set aside by the High Court in revision. MAHADEO LAL *v.* DARSAN GOPE (1910)
15 C. W. N. 542

3. ——— Fraud—*Execution sale—Suit to set aside as collusive and fraudulent, after application refused under s 311, Civil Procedure Code (Act XIV of 1882)—Benami purchase, allegation of—Misrepresentation by judgment-debtor's pleader—Auction-purchaser if to be held responsible—Concurrent findings of fraud, reversed.* In a suit to set aside an auction sale on the ground that it was brought about by the fraud of the decree-holder and the judgment-debtor, it being alleged further that the auction-purchaser was a *benamdar* of the judgment-debtor, it was found that the debt and the decree of the decree-holder were genuine, that the property was purchased by the auction-purchaser who was a man of substance out of his own funds which thereupon went to pay off the judgment-debtor's creditors: *Held*, on the evidence, that the allegation of fraud and conspiracy made against the auction-purchaser had not been brought home to him, and that, under all the circumstances, there was no sufficient ground for setting aside a sale confirmed by the Court after prompt local enquiry and for inflicting on the auction-purchaser a forfeiture of the considerable purchase-money paid by him out of his own funds *Held*, further, that if the allegation that the plaintiff's men were dissuaded from bidding at the sale by the pleader for the judgment-debtor falsely assuring them that he had instructions to apply for a postponement, was true, the auction-purchaser could not be held responsible for the misrepresentation The concurrent judgments of the Courts in India holding the sale to be fraudulent and collusive reversed BISHUN CHAND BACHHAOT *v* BIJOY SINGH DUDHURIA (1911)
15 C. W. N. 648

4. ——— *Execution sale—Application to set aside on the ground of fraud—Understatement of value, if fraud—Limitation—Limitation Act (IX of 1908), s 18, Sch. I, Art. 166—Sale before Act, new or old Act applicable—General Clauses Act (X of 1897), s 6 Per* COXE, *J* (TEUNON, *J*, *expressing no opinion*). An understatement of value in the sale proclamation cannot by itself justify an inference of fraud on the part of the decree-holder. *Semble* S 18 of the Limitation Act does not apply to a case in which the fraud is antecedent to the accrual of the right *Purna Chandra Mandal v. Amulul Biswas, I L. R. 36 Calc. 654, Rahimbhoy Habibhoy v C A. Turner, I L. R 17 Bom 341*, referred to. *Held*, that s. 18 can apply only to such fraud as amounts to concealment and is intended to keep from the injured party the knowledge of the wrong or its remedy. The section therefore can have no application where the fraud alleged by a party applying to set aside an execution sale is understatement of the value of the properties in the sale proclamation. The burden of proving fraud lies on the applicant *Semble* An application to set aside on the ground of fraud an execution sale held prior to the coming into operation of Act IX of 1908 will be governed by Art 166 of Sch I of that Act, if made after that Act came into operation. S. 6 of the General Clauses Act does not preserve the right the applicant had to apply within three years from the date of the sale. RAIKISHORI DASYA *v.* MUKUNDA LAL DUTT (1911) . . . **15 C. W. N. 965**

5. ——— Agreement between judgment-debtor and decree-holder, before confirmation, setting aside sale—*Auction-purchaser, if bound—"Party"—Right to object—Right of appeal—Civil Procedure Code (Act V of 1908), O. XXI, rr. 89, 90, 92, s 148—Limitation Act (IX of 1908), s 5—Extension of time to deposit decretal money, etc., to set aside sale.* Where after

SALE IN EXECUTION OF DECREE —*concld.*

the sale of a property in execution of a decree but before confirmation thereof, the decree-holder consented to the sale being set aside on payment of the decretal amount by the judgment-debtor, and the payment was made and certified in Court: *Held*, that this did not preclude the auction-purchaser, whose right is independent of that of the decree-holder from asking for confirmation of the sale in his own right He would also, if his application were rejected, be entitled to appeal from that decision, being a party prejudicially affected by that order *Poorna Chandra* v. *Doorga Prosad*, *3 Shome 104*, commented on. The High Court has no power to extend the time allowed to the judgment-debtor by O 21, r. 92. sub-r. (2) to deposit the decretal amount, etc., with a view to setting aside the sale, either under s 5, Limitation Act, or under s 148, Civil Procedure Code SHAROFAN *v* MAHOMED HABIBUDDIN (1911) **15 C. W. N. 685**

SALE OF LAND.

——— **agreement for—**

See SPECIFIC PERFORMANCE **I L R. 38 Calc. 805**

SALE PROCLAMATION.

See EXECUTION OF DECREE **I. L R. 38 Calc 482**

SAMBALPUR.

See APPEAL . **I. L. R. 38 Calc. 391**

SANCTION FOR PROSECUTION.

See CIVIL PROCEDURE CODE, 1908, s. 115. **I L. R. 33 All. 512**

SARSA WANTA LAND.

See GUJERATH TALUKDARS' ACT (BOM. ACT VI OF 1888), s 31 **I. L. R. 35 Bom. 97**

SEARCH WITHOUT WARRANT.

——— *Power of the police to search the house of an absconding offender generally for stolen property on information of dacoity against him—Legality of Search—Criminal Procedure Code (Act V of 1898), ss. 94 and 165—Rioting—Common object to resist such search—Right of private defence—Penal Code (Act XLV of 1860), ss. 99, 147, 323, 353.* S. 165 of the Criminal Procedure Code does not authorize a general search for stolen property in the house of the absconding offender, against whom an information has been laid of having committed a dacoity. It refers only to specific documents or things which may be the subject of a summons or order under s 94 of the Code, and the latter does not extend to stolen articles or any incriminating document or thing in the possession of the accused. *Ishwar Chandra Ghosal* v. *Emperor*, *12 C. W. N. 1016*, referred to Where a Sub-Inspector, on receiving information of the commission of a

SEARCH WITHOUT WARRANT—*concld.*

dacoity, searched the house of one of the alleged offenders, accompanied by the complainant and the village officers, but without a search warrant, whereupon they were beaten by the petitioners who were charged with, and convicted of, rioting, with the common object of resisting the search, assault and causing hurt, under ss 147, 323 and 353 of the Penal Code:—*Held*, that the search was illegal, and that, the common object having failed, the conviction under s 147 was bad BAJRANGI GOPE *v.* EMPEROR (1910) . **I. L. R. 38 Calc. 304**

SECOND APPEAL.

See APPEAL . **I. L. R 38 Calc. 391**

See RENT . **I L R. 38 Calc 278**

1. ——— *Second Appeal, if it lies from an order passed under O. XXI, rr. 89 and 92 of the Code of Civil Procedure, 1908—Civil Procedure Code (Act V of 1908), ss 2, 49, 104 (2), O. XXI, rr 89-92; O. XLIII, r. 1 (j)—Civil Procedure Code (Act XIV of 1882), ss. 310A, 312, and 588.* No second appeal lies from an order passed in first appeal from an order under r. 89 or 92 of O XXI of the Code of Civil Procedure, 1908 S. 104, sub-s. (2) of the Code of 1908 takes away the right of second appeal where a second appeal could lie in cases under s. 310A read with s 244 of the Code of 1882. ASIMADDI SHEIKH *v.* SUNDARI BIBI (1911) . . **I. L. R. 38 Calc. 339**

2. ——— *Civil Procedure Code (Act XIV of 1882), s 586—Valuation of suit, determined by plaint—Suit for mesne profits, tentative valuation, value if may be increased on appeal—Court Fees Act (VII of 1870), ss. 7, 11—Suits Valuation Act (VII of 1887), s. 8.* The plaintiffs in a suit for mesne profits valued their suit at R300 and prayed that if the amount of mesne profits were found to be greater than R300 they might be awarded a decree for the excess amount upon payment of additional Court-fees At an enquiry held by a Commissioner the plaintiffs put forward a claim to a rate of a rent which if accepted would increase the total claim to above R500. The Commissioner however did not accept that rate and the plaintiffs did not take any steps to get the plaint amended nor offer to pay additional Court-fee. The Munsif gave a decree for R223 and the plaintiffs appealed against that decree valuing the appeal at R357 calculating the mesne profits at the rate at which they were claimed before the Commissioner. *Held*, that for purposes of jurisdiction the suit must be held to have been valued at R300 and that therefore no second appeal lay. *Ijjatulla Bhuyan* v. *Chandra Mohan Banerji*, *I L. R 34 Calc. 954: s.c 11 C. W. N. 1133*, distinguished. *Sri Bollov Bhattacharji* v. *Baburam Chattopadhya*, *I L R 11 Calc 169*, followed. It was not open to the plaintiffs in their appeal to put a higher value on their suit than in the plaint without an application to amend the plaint and such valuation did not have the effect of increasing the value of the subject-matter of the suit. KALI

SECOND APPEAL—*concld.*

KAMAL MAITRA *v.* FAIZLAR RAHAMAN KHAN CHOWDHURI (1910) . . . **15 C. W. N. 454**

SECRETARY OF STATE FOR INDIA.

See CAUSE OF ACTION.
I. L. R. 38 Calc. 797

——— suit against—

See CIVIL PROCEDURE CODE, 1882, S 424.
I. L. R. 35 Bom 362

——— Liability in respect of contract of service—*Pay and Pension—Cause of action—Pensions Act (XXIII of 1871), s 4.* The plaintiff, who was in the Educational Department drawing a salary of R150 a month, was in 1881 employed by the Government on special duty under an agreement, one of the terms being "from the 1st September, 1881, his pay will be raised during good behaviour to R300 a month." It was assumed that this meant "for the term of his natural life." The special duty was completed, but the plaintiff, in spite of his protests was retained on deputation till 1902, when he was made to revert to the Educational Department and was retired in 1904 Since or from shortly before his retirement he was paid only R150 a month. In an action instituted by the plaintiff against the Secretary of State for a declaration that he was entitled to be paid R300 a month for his natural life, and for arrears on the basis of that figure :—*Held*, that the plaintiff must be taken to have treated the whole of his service under Government as one service, and that anything payable to him after the termination of that service was in the nature of a "pension" within the meaning of s. 4 of the Pensions Act of 1871, and hence the suit was not maintainable. SARAT CHANDRA DAS *v.* SECRETARY OF STATE FOR INDIA (1910) . . **I. L. R. 38 Calc. 378**

SECURITY.

See CRIMINAL PROCEDURE CODE, S 123
I. L. R. 35 Bom. 271

——— deposit of—

See LIMITATION ACT, 1908, SCH. I. ART. 164 . . . **15 C. W. N. 102**

SECURITY BOND—

See EXECUTION OF DECREE.
I. L. R. 38 Calc. 754

——— by the Secretary of State for India—

See EXECUTION OF DECREE.
I. L. R. 38 Calc. 754

SECURITY FOR COSTS.

See CIVIL PROCEDURE CODE, 1908, O. XXV, R. 1 . **I. L. R. 35 Bom. 421**

——— *Infant plaintiff—Civil Procedure Code (Act V of 1908), Sch I, O. XXV, r. 1—Practice.* It is not desirable to run any risk of stopping a suit filed on behalf of an infant, which may be a proper suit to bring, merely because of some inability on the part of the next friend to give security for costs. BHAISHANKER AMBASHANKER *v* MULJI ASHARAM (1910)
I. L. R. 35 Bom. 339

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, SS. 119, 200, 437 . **I. L. R. 35 Bom. 401**

——— *Evidence of acts committed several years before the proceedings—"Offences involving breach of the peace"—Acts of high-handedness not accompanied with actual breaches of the peace—Liability of zemindar for acts of his naib and lathials committed in his interest—Abetment of offences involving a breach of the peace—Criminal Procedure Code (Act V of 1898), s. 110 (e).* Evidence of acts falling within the scope of s. 110 of the Criminal Procedure Code, but committed several years before the date of the institution of the proceedings thereunder, is admissible *Wahid Ali Khan* v. *Emperor, 11 C. W. N. 789*, followed To bring a case within the section a person must be found to have habitually committed, attempted to commit, or abetted the commission of, offences of which a breach of the peace is an ingredient. *Arun Samanta* v *Emperor, I. L. R. 30 Calc. 366*, followed. Where the only conviction against a zemindar was one under s. 150 of the Penal Code and there was evidence that he with his lathials (or his servants acting under his orders), took articles of food from bazar vendors, that he assembled lathials to enforce the performance of *puja* by his own *purohit*, threatened a witness with violence for deposing against him, and, with his lathials, uprooted some trees, cut the crops of his opponents, molested rival fishermen in boats and attempted to stop a marriage procession, but no breach of the peace was committed or complaint made by the opposite party :—*Held*, that such acts did not involve a breach of the peace so as to support a charge of habitually committing offences within cl. (*e*). But where the zemindar's naib had led several riots in his master's interest and had been convicted in several such cases, and there was evidence that certain lathials were always employed to help his cause :—*Held*, that he had habitually abetted the commission of offences mentioned in that clause. *Kasi Sundar Roy* v. *Emperor, I. L. R. 31 Calc. 419*, followed. A Magistrate should be careful to see that s. 110 is not employed by private persons to wreck vengeance under the ægis of a Crown prosecution. KALI PRASANNA BOSE *v.* EMPEROR (1910) . . **I. L. R. 38 Calc. 156**

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, S. 106 (*3*).
I. L. R. 33 All. 48 ; 771

See CRIMINAL PROCEDURE CODE, S. 107.
I. L. R. 33 All. 775

See CRIMINAL PROCEDURE CODE, S. 125
I. L. R. 33 All. 624

SEDITION.

See PRESS ACT (XXV OF 1867), SS 4 AND 5 . . . I. L. R. 35 Bom. 55

1. ——— **Wholesale imputation of bribery against ministerial and police officers and of neglect on the part of Government to inquire into such abuses**—*Sedition—Attempt to promote enmity between different classes—Inveighing against Hindus and Mahomedans alike—Penal Code (Act XLV of 1860), ss. 124A and 153A—Convictions at one trial under ss. 124A and 153A of the Penal Code—Appeal to the High Court—Criminal Procedure Code (Act V of 1898), ss. 35 (3), 408 prov.* (c). A single expression that the people of Bengal are trodden under the feet of outsiders used incidentally in a newspaper article, otherwise innocuous, does not constitute the whole seditious. An article imputing wholesale bribery to the ministerial officers of the Law Courts and to the lower officers of the police force, and expressing grave doubts as to whether the Government ever inquire into such abuses, so much is it occupied with investigations of boycott, dacoity and sedition, published when sedition is rife and the minds of people excited, may have the effect of creating a feeling that the Government is not doing its duty, and exceeds the limits of fair comment and is seditious, irrespective of the question of the truth of the allegations. Where the writer of an article inveighed both against the Babus and Meahs as professing brotherhood with the poor Mahomedan ryots and then robbing them, and referred to the alleged conduct of Christian missionaries towards their converts, by way of illustration, without any deliberate attempt to excite one class against another, the conviction under s. 153A of the Penal Code was set aside as bad in law. *Per* RICHARDSON, *J.*—If a particular article is charged as being seditious on the ground that it says more than appears on the face of it, it is the duty of the prosecution to show that it has, in fact, the guilty meaning or intent attributed to it. *Semble* An appeal lies under ss. 35 (*3*) and 408, prov. (c), directly to the High Court from a conviction and separate sentences under ss. 124A and 153A of the Penal Code passed on the same trial. JOY CHANDRA SARKAR *v* EMPEROR (1910) . . I. L. R. 38 Calc. 214

2. ——— **Liability of declared printer and publisher of a newspaper for seditious matter appearing therein**—*Sedition—Absence during the period of the publication of the seditious articles, bonâ fides not made out—Printing Presses and Newspapers Act (XXV of 1867), s. 7.* The declared printer and publisher of a newspaper containing seditious articles is responsible for them unless he makes out, on sufficient evidence, that he had in fact nothing to do with them. Where the editor of a newspaper was convicted and sentenced under s. 124 A of the Penal Code, and the accused made his declaration as printer and publisher thereafter, and continued so to act after the editor had resumed work on release from jail, and further allowed his name to appear as such, though he was absent from the town of publication of the paper when certain seditious articles appeared therein and engaged during the period in his own private business without taking any interest in the paper, it was *held* that he had not made out the *bonâ fides* of his absence, and was, therefore, legally responsible for the articles. SURENDRA PROSAD LAHIRI *v.* EMPEROR (1910) . I. L. R. 38 Calc. 227

SEDITION—*contd.*

3. ——— *Sedition—Attack on rival political party but not on Government established by law in British India—Limits of legitimate criticism of acts and measures of Government—Construction of letter or article in a newspaper—Admissibility of articles in other issues not forming the subject of the charge when the identity of the writer is not proved—Penal Code (Act XLV of 1860), s. 124A—Evidence Act (I of 1872), s 15—Liability of registered printer and publisher—Printing Presses and Newspaper Act (XXV of 1867), s. 7.* A letter or an article in a newspaper containing an attack on a rival political organization and not on the Government established by law in British India, is not seditious within the meaning of s 124A of the Penal Code A man may criticise or comment on any act or measure of the Government legislative or executive, and freely express his opinion on it. He may express the strongest condemnation of such measures, and he may do so severely and even unreasonably, perversely or unfairly provided he does not, whether in his comments on measures or not, hold up the Government itself to hatred and contempt *Queen-Empress* v. *Bal Gangadhar Tilak, I. L. R. 22 Bom. 112*, approved of. It is not sedition for a writer to describe the Reform Scheme as being monstrous and misbegotten, because it is not founded on democratic principles and not a genuine reform or a genuine initiation of constitutional progress, or to assert that some of the police officials and the judiciary are corrupt, unscrupulous and partial, or to state that if an organisation which he believes to be lawful is suppressed by proclamation it is arbitrary, and that in such case the responsibility will not rest on him for the madness which crushes down open and legal political activity in order to give a desperate and sullen nation into the hands of fiercely enthusiastic and unscrupulous forces, or to inculcate the doctrine of passive resistance or refusal of co-operation with the Government within legal limits, or to describe the British Courts in India as ruinously expensive. In construing a newspaper article its meaning must be taken from the article as a whole and not from isolated passages. Words and expressions such as *arbitrary executive* must not be looked at as if the writer was a constitutional lawyer instead of a journalist. *Queen-Empress* v. *Bal Gangadhar Tilak, I. L. R. 22 Bom 112*, approved of. Articles not forming the subject of the charge and appearing in other issues of the same paper, are not admissible to show the intention of the writer in the article complained of in the absence of proof of his identity. The declared printer and publisher of a letter or article in a newspaper is amenable to the law merely on proof that it is calculated to excite feelings of disaffection, hatred or contempt against

SEDITION—*concld*

the Government, but the prosecution must prove either that the writer does in fact excite such feelings or that his intention was to do so. The writer of an article may be guilty of sedition no matter how guardedly he attempts to conceal his real object, but the registered printer and publisher cannot be punished if the concealed object is not established by the evidence on the record *Queen-Empress* v. *Amba Prasad, I. L R 20 All 55*, referred to. MANOMOHAN GHOSE *v* EMPEROR (1910) . . . **I. L. R. 38 Calc. 253**

SENTENCE.

See CRIMINAL PROCEDURE CODE, S 106 (*3*) . . . **I. L. R. 33 All. 48**

See CRIMINAL PROCEDURE CODE, SS 408, 415 . . **I. L. R. 33 All. 510**

See PRACTICE . **I. L. R. 35 Bom. 418**

SEPARATE SENTENCES.

See MISJOINDER **I. L. R. 38 Calc. 453**

SET-OFF.

See CIVIL PROCEDURE CODE, 1908, O. XXI, RR. 18, 19, 20. **I. L. R. 33 All. 240**

SETTLEMENT.

See STAMP ACT, 1899, S 2 (*24*), SCH. I, ART. 7 . **I. L. R. 35 Bom. 444**

SHEBAIT.

——— power of—

See HINDU LAW—ENDOWMENT **I. L. R. 38 Calc. 526**

——— title of—

See PROVINCIAL SMALL CAUSE COURTS ACT, S. 23 . **15 C. W. N. 666**

SIGNATURE.

——— genuineness of—

See SPECIFIC PERFORMANCE **I. L. R. 38 Calc. 805**

SIKKIM.

——— Court of the Political Agent of—

See POLITICAL AGENT, SIKKIM. **I. L. R. 38 Calc. 859**
15 C. W. N. 992

SIMULTANEOUS ADOPTION.

See HINDU LAW—ADOPTION. **I. L. R. 38 Calc. 694**

"SIR" LAND.

——— mortgage of—

See MORTGAGE . **I. L. R. 33 All. 434**

SMALL CAUSE COURT.

——— suit not cognizable by—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 91. **I. L. R. 35 Bom. 29**

SOLICITOR'S LIEN FOR COSTS.

——— *Charge of Solicitors—Inspection of documents—Administration suit.* The right to be exercised by a Solicitor claiming a lien largely depends upon the circumstances under which he has ceased to act for his client, the test being whether the Solicitor has discharged himself or has been discharged by the client The obligation on the Solicitor to give inspection of and to produce documents in his possession over which he has a lien in an administration action is confined to those cases where they are essential to the determination of those questions which arise in the normal administration proceedings when the estate is being actually administered *Boughton* v. *Boughton, 23 Ch D 169* and *In re Capital Fire Insurance Association, 24 Ch D. 408*, considered. AISHABIBI *v* AHMED BIN ESSA (1910) **I. L R. 35 Bom. 352**

SPECIAL DAMAGE.

See TORT . . **I. L. R. 33 All. 287**

SPECIFIC PERFORMANCE.

1. ——— Sale of immoveable property—*Marketable title, to the satisfaction of the purchaser's solicitors* When a vendor of immoveable property desires to enforce a contract for sale with a condition that the title adduced should be to the satisfaction of the purchaser's solicitors, he must prove either that the solicitors did approve of the title or that there was such a title tendered as made it unreasonable to approve of it *Clack* v *Wood, 9 Q B D. 276*, followed. TREACHER & Co. *v.* MAHOMEDALLY ADAMJI PEERBHOY (1910) **I. L. R. 35 Bom. 110**

2. ——— *Denial of execution of agreement by defendant—Conflicting evidence as to genuineness of signature—Consideration as to which story best agrees with admitted facts—Defendant in pecuniary difficulties—Plaintiff in a position to "dominate his will"—Bargain onerous but not unconscionable—Absence of fraud or misrepresentation by plaintiff—Discretion in granting or refusing specific performance.* In a suit to enforce specific performance of an agreeement dated 4th April, 1906, for the sale of land, in which the defendant (appellant) denied that he ever signed the agreement, the evidence on that point was conflicting, though otherwise there was much unanimity on the general facts The two lower Courts (of the Chief Court of Lower Burma) differed, the Original Court holding that the defendant's signature was a forgery, and the Appellate Court reversing that decision and making a decree for specific performance. *Held*, by the Judicial Committee, that the proper course was to examine the admitted facts and circumstances as furnishing the safest guide to a correct conclusion On this test their Lordships were of opinion that the plaintiff's (respondent's) account of the transaction best fitted in with the admitted facts and that the defence was untrue. The defendant, when he acquired the land in 1901, was admittedly in pecuniary difficulties, and had bought it with money raised by mortgaging it. In

SPECIFIC PERFORMANCE—*concld.*

1905 his mortgagee was pressing for payment, and another creditor had taken out execution. The arrangement he was obliged to make with the plaintiff was, therefore, necessarily of a somewhat onerous nature *Held*, that in the absence of any evidence of fraud or misrepresentation on the part of the plaintiff, which induced the defendant to enter into the contract, or that the plaintiff under the circumstances took an improper advantage of his position or the difficulties of the defendant, and having regard to the character of the agreement, which, in their opinion, though onerous, was not unconscionable, their Lordships saw no reason, in the exercise of their discretion, for refusing to grant specific performance The decree of the Appellate Court was therefore upheld DAVIS *v* MAUNG SHWE GOH (1911)

I. L. R. 38 Calc. 805

SPECIFIC RELIEF ACT (I OF 1877).

———ss. 8, 9—*Suit for ejectment based on title —Court not competent in such a suit to grant a decree on the basis merely of previous possession.* Where a plaintiff sues for possession on the basis of title and fails to establish his title, he cannot be granted a decree for possession under the first paragraph of s. 9 of the Specific Relief Act. *Ram Harakh Rai* v *Sheodihal Joti, I. L R 15 All 384*, and *Mousi* v. *Kashia, All. Weekly Notes (1897) 145*, overruled *Ramasami Chetti* v. *Paraman Chetti, I L R. 25 Mad. 448*, followed. *Wajid Ali* v *Ram Saran All. Weekly Notes (1884) 39*, and *Chuthan Rai* v. *Sheo Ghulam Rai, All. Weekly Notes (1889) 89*, referred to LACHMAN *v* SHAMBHU NARAIN (1910)

I. L. R. 33 All. 174

1. ——— s. 9—*Possessory suits dismissed —Application by plaintiff for revision rejected.* When the plaintiff's suit under s 9 of the Specific Relief Act, 1877, was dismissed, the High Court declined to interfere in revision upon the ground that it was open to the plaintiff to take another remedy and bring a regular suit on title. *Jwala* v *Ganga Prasad, I. L R 30 All 331*, followed. RAM KISHEN DAS *v.* JAI KISHEN DAS (1911)

I. L. R. 33 All. 647

2. ——— *Tenants, dispossession of, if dispossession of landlord—Physical possession, if must be proved.* Tenants settled by the plaintiff being dispossessed by the defendant relinquished the land to the plaintiff :—*Held*, that the plaintiff was in the circumstances entitled to sue under s 9, Specific Relief Act *Bindubashini* v *Jahnavi, 13 C. W. N. 303*, *Jagannatha* v. *Rama, I. L R. 28 Mad. 238*, relied on *Tarini Mohun* v *Gunga Prasad, I. L. R 14 Calc. 649*. *Sonatan Shome* v. *Sheikh Helim, 6 C W. N. 616*, distinguished. NOBIN DAS *v.* KAILASH CHANDRA DEY (1910) . . . **15 C. W. N. 294**

3. ——— *Dispossession in execution of decree obtained against third party, if in due course of law* Where the *burgadars* of a tenant were dispossessed from their land in execution of a decree against the tenant to which the *burgadars* were not parties and which was obtained upon a false admission by the tenant himself —*Held*, that the dispossession was in due course of law within the meaning of s. 9 of the Specific Relief Act. HARAN CHANDRA PAL *v* MADAN MOHAN BANIKHYA (1911) . . **15 C. W. N. 956**

4. ——— *Dispossession— Ouster of tenant, if dispossession of landlord* The ouster of a tenant is an ouster of the landlord for which the landlord can sue under s. 9 of the Specific Relief Act *Bindubashini Chaudhurani* v. *Jahnavi, 13 C. W. N 303*, *Bindubashini Chaudhurani* v *Janhobi Chaudhurani, 13 C W N. 307n*, *Janoki Nath Roy* v. *Dinamoni Chaudhurani, 13 C W. N 305*, *Shyama Chun* v *Mahomed Ali, 13 C W. N 835*, *Nabin Chunder Das* v. *Koylash Chunder Das, 12 C L J 483*, followed *Sonaton Shome* v. *Sheikh Helim, 6 C. W. N. 616*, not followed. AKHIL CHANDRA DEY *v* AKHIL CHANDRA BISWAS (1911) . **15 C. W. N. 715**

——— s. 21—*Arbitration—Reference to arbitration pleaded in bar of suit—Effect of reference having become unenforceable before suit Held*, that an agreement to refer to arbitration which has not been acted upon and which has become from lapse of time unenforceable cannot be set up as a bar to a suit respecting matters which had been included in the agreement *Atma Rai* v *Sheobaran Rai, All Weekly Notes (1882) 58*, *Tahal* v *Bisheshar, I. L R 8 All 57*, and *Adhibai* v. *Cursandas Nathu, I. L R 11 Bom. 199* RAM KUMAR SINGH *v.* JAG MOHAN SINGH (1910) . **I. L. R. 33 All. 315**

——— s. 42—*Hindu law—Reversioner—Suit for declaration of title—Cause of action—Will made by Hindu widow in possession—Limitation D*, a separated Hindu, and his son *A* died in 1891 on the same day, the father dying first. *A's* son, *S M*, died a week later, leaving his mother *H* and his grandmother *M* The property was then recorded in the names of *M* and *H*; but *M* got possession, and in 1908 executed a will in favour of her daughter *S*. The reversioners of *D* brought a suit in 1908 for a declaration that the will would have no effect on their reversionary right. *S* set up her right to the property, ignoring that of *H*. *Held*, that even during the lifetime of *H*, the plaintiffs were entitled to institute a suit for a declaration only under the provisions of s. 42, Specific Relief Act *Held*, further, that the suit was not barred by limitation. Mutation of names in *M's* favour was more or less an equivocal act and might possibly have given a cause of action, but when in 1908 *M* specifically declared that the heir to the property was *S* and *S* herself asserted her title, the plaintiffs acquired a cause of action sufficient to entitle them to sue. SHEORAJI *v.* RAMJAS PANDE (1911) . . . **I. L. R. 33 All 430**

——— s. 45. Where the Magistrate had refused to furnish such copies to a party, the High Court under s 45 of the Specific Relief Act ordered the records of the case to be brought up to High

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 9—*concld*

SPECIFIC RELIEF ACT (I OF 1877)—*concld*

——— s. 45—*concld.*

Court and kept with the Registrar, and allowed liberty to the party to take copies. BENI MADHUB BANERJEE *v.* SAILENDRA NATH MUKERJEE (1911) 15 C W. N. 770

——— ss. 45, 46.

See MANDAMUS. I. L. R. 38 Calc. 553

——— Chap. X—

See FOOTINGS. I. L. R. 38 Calc 687

SPY OR DETECTIVE.

See ACCOMPLICE. I. L. R. 38 Calc. 96

STAKEHOLDER.

——— *Deposit of money—Valid assignment by depositor to his creditor—Neglect of the creditor to recover—Creditor chargeable with the amount.* Where money deposited with a stakeholder was validly assigned by the depositor to his creditor in satisfaction of his debt and the creditor, being able to recover the amount so assigned, neglected to do so he was chargeable with the amount GANPATRAO BALKRISHNA BHIDE *v.* THE MAHARAJA MADHAVRAO SINDE (1910) I. L. R. 35. Bom. 1

STAMP ACT (II OF 1899).

——— ss. 2 (*21*), 60; Sch. I, Art. 48 (*g*)—*Stamp—Power of attorney—Document authorizing holder to appear and do all acts necessary for execution of decree. Held,* that a document purporting to authorize the person in whose favour it was executed, who was not a certificated mukhtar or pleader, to appear and do all acts necessary for the execution of a decree of a foreign court, which had been transferred to a court in the United Provinces for execution, required to be stamped as a power of attorney with a one rupee stamp, and not as a vakalatnamah or mukhtarnamah. PARMANAND *v* SAT PRASAD (1911) . I. L. R. 33 All. 487

——— s. 2 (*24*), Sch. I, Art. 7—*Instrument declaring trust—Fund composed of two parts—Absence of previous disposition in one part—Settlement—Disposition for charity of the other part—Appointment—Stamp duty.* An instrument was prepared for the purpose of declaring trusts of certain funds devoted to charity. The funds amounted to about R3,00,000 and came to the hands of the trustees from two sources. About R1,00,000 was the result of appeals to various persons and the rest was provided by the executors of the will of one *A.H.* The instrument declaring the trusts was engrossed on a stamp paper of R15 and a question having arisen as to whether the instrument was properly stamped. *Held,* that so far as the fund of R1,00,000 was concerned, there being no previous disposition in writing of any part of it though some of the contributions were accompanied by letters from the donors expressing their wishes with respect to the

STAMP ACT (II OF 1899)—*contd.*

——— s. 2 (*24*)—*contd.*

funds contributed, the instrument was a settlement according to the definition in s. 2 (*24*) of the Indian Stamp Act (II of 1899) and was chargeable with duty on R1,03,200 at the rate of 8 annas per cent. *Held,* also, that so far as the fund of R2,00,000 was concerned, the provisions of the will of *A.H.* amounted to a disposition for a charitable purpose and the instrument was an appointment chargeable with a duty of R15 under Sch. I, Art. 7 of the Indian Stamp Act (II of 1899). *In re* ABDULLA HAJI DAWOOD BOWLA ORPHANAGE (1911) I. L. R. 35 Bom. 444

——— s. 35—*Civil Procedure Code (Act V of 1908), O XXI, r. 91—Contract Act (IX of 1872), s. 18, cl. (3)—Court-sale—Discovery that the judgment-debtor had no saleable interest—Failure of consideration—Suit by auction-purchaser for possession or return of purchase-money—Relations of the judgment-creditor and auction-purchaser—Suit not cognizable by Small Causes Court—Unstamped document regarded as non-existent* A Court-sale purchaser having discovered that the judgment-debtors had no saleable interest in the property sold brought a suit against the judgment-creditor for recovery of possession of the property, or in the alternative, return of the purchase-money on the footing of total failure of consideration. A question having arisen as to whether the suit was maintainable. *Held,* that the suit was maintainable inasmuch as under the Civil Procedure Code (Act V of 1908) there was an implied warranty of some saleable interest when the right, title and interest of the judgment-debtor was put up for sale; and the purchaser's right based on such implied warranty to a return under certain conditions of the purchase-money which had been received by the judgment-creditor was recognized The relations of the parties, namely, the judgment-creditor and the Court-sale purchaser were also in the nature of contract. *Held,* further, that such a suit, though the subject-matter was less than R500, was not cognizable by a Court of Small Causes, there being a prayer for possession of immoveable property. An unstamped document being inadmissible in evidence must be taken as non-existent. RUSTOMJI ARDESHIR IRANI *v.* VINAYAK GANGADHAR BHAT (1910) I. L. R. 35 Bom. 29

——— s. 59—*Undivided brothers—Instruments whereby co-owners divide property in severalty—Release—Partition—Stamp.* Instruments whereby co-owners of any property divide or agree to divide it in severalty are instruments of partition. One of three undivided brothers agreed to take from the eldest brother, the manager of the family, as his share in the family property, moveable and immoveable, a certain cash and bonds for debts due to the family, and passed to the eldest brother a document in the form of a release. Subsequently one of the two brothers passed to the eldest brother a document in the form of a release whereby he and the eldest brother divided the remaining

STAMP ACT (II OF 1899)—*concld.*

——— s. 59—*concld.*

family property by the latter handing over to the former securities for money. A question having arisen as to whether for the purpose of stamp duty the said two documents were to be treated as releases or instruments of partition: *Held*, that the documents were instruments of partition. *In re* GOVIND PANDURANG KAMAT (1910) I. L. R. 35 Bom. 75

STAMP DUTY.

See POWER OF ATTORNEY. I. L. R. 33 All. 487

STATUTE, CONSTRUCTION OF.

——— Repeal—*Civil Procedure Code (Act XIV of 1882), s. 257A—Civil Procedure Code (Act V of 1908), repealing s. 257A—Effect of the repeal on s. 13, cl. (c) of the Dekkhan Agriculturists' Relief Act (XVII of 1879).* S. 13, cl. (c) of the Dekkhan Agriculturists' Relief Act (XVII of 1879) not having been expressly repealed is not affected by the repeal of s. 257A of the Civil Procedure Code, 1882, by the Civil Procedure Code of 1908. TRIMBAK KASHIRAM *v.* ABAJI (1911) I. L. R. 35 Bom. 307

STATUTES.

——— II Geo. IV and I Will. IV, c. 68—

See CARRIERS ACT . 15 C. W. N. 226

——— 11 & 12 Vict., c. 21—

See INDIAN INSOLVENCY ACT.

——— 21 & 22 Vict., c. 106, ss. 39, 40, 41, 42.

See STAY OF EXECUTION. 15 C. W. N. 475

——— 24 & 25 Vict., c. 104—

See LAND ACQUISITION ACT, s. 11. 15 C. W. N. 87

——— 44 & 45 Vict., c. LVIII, s. 136—

See CIVIL PROCEDURE CODE, 1908, s. 60. I. L. R. 33 All. 529

——— 58 & 59 Vict., c. V, s. 4—

See CIVIL PROCEDURE CODE, 1908, s. 60. I. L. R. 33 All. 529

STAY OF EXECUTION.

See EXECUTION OF DECREE. I. L. R. 38 Calc. 754

——— pending appeal—

See PRIVY COUNCIL, PRACTICE OF. I. L. R. 38 Calc. 335

STAY OF PROCEEDINGS.

See RECEIVER, SUIT AGAINST. 15 C. W. N. 54

STOLEN PROPERTY.

See CRIMINAL PROCEDURE CODE, S. 520. I. L. R. 35 Bom. 253

See SEARCH WITHOUT WARRANT. I. L. R. 38 Calc. 304

STRIDHAN.

See HINDU LAW—PROSTITUTE'S ESTATE. I. L. R. 38 Calc. 493

See HINDU LAW—SUCCESSION. 15 C. W. N. 383; 1036

SUBROGATION.

See COMMON CARRIER, LIABILITIES OF I. L. R. 38 Calc. 28

See MORTGAGE . 15 C. W. N. 312

See TRANSFER OF PROPERTY ACT, S. 52. 15 C. W. N. 62

SUBSEQUENT MORTGAGE.

See MORTGAGE . I. L. R. 38 Calc. 60

SUBSTITUTED SERVICE.

——— *Civil Procedure Code (Act V of 1908), O. V, r. 17, O. IX, r. 13,—Ex parte decree—Original Court, jurisdiction of, to set aside an ex parte decree, while an appeal is pending—"Reside," meaning of—Limitation Acts (XV of 1877), Sch. II, Art 164, and Act IX of 1908, Sch. I, Art. 64—Knowledge of the decree.* The term "residence" is not identical with "ownership"? In O. V, rr 9 and 17 of the Code of Civil Procedure, 1908, it means the place where a person eats, drinks, and sleeps, or where his family or servants eat, drink, and sleep. Under O. V, r. 17, a substituted service can be justified only when it is shown that proper efforts were made to find the defendant. Where a defendant was not found in his ancestral family house, and there was no one present upon whom a summons could be served (in fact he was working in a different district and living there for some years), a substituted service by affixing a copy of the summons at the outer door of the family house was not justified under the law. An Original Court can entertain an application to set aside an *ex parte* decree though an appeal by the contesting defendants is pending in the Appellate Court. *Sarat Chandra Dhal* v. *Damodar Manna, 12 C. W. N. 885*, followed. The period of limitation under Art. 164 of Sch. I of the Limitation Act (IX of 1908) runs from the date when the defendant has knowledge of the particular decree which is sought to be set aside. KUMUD NATH ROY CHOWDHURY *v.* JOTINDRA NATH CHOWDHURY (1911) . . I. L. R. 38 Calc. 394

SUCCESSION.

See HINDU LAW—SUCCESSION—PROSTITUTE'S ESTATE I. L. R. 38 Calc. 493

——— attempt to alter mode of—

See HINDU LAW—INHERITANCE. I. L. R. 38 Calc. 603

SUCCESSION—*concld.*

——— in direct male line—

See HINDU LAW—INHERITANCE
I. L. R. 38 Calc. 603

SUCCESSION ACT (X OF 1865).

——— s. 2—*Indian Succession Act (X of 1865), ss 2, 331—Hindu, meaning of—Hindu convert to Christianity, the law applicable to estate of, on intestacy—Pleadings—Adverse possession not set up in plaint if may be relied on* Where a Hindu was converted to Christianity and died as a Christian the law applicable to his estate is that laid down by the Indian Succession Act Under s 2, the Act is of universal application and a party who claims to be exempt from its operation must show that he is specifically exempted *Dagree* v *Pacotti, I L R 19 Bom 783, De Souza* v. *Secretary of State, 12 B L R 423,* followed To come under the exception in s. 331 it is not enough to show that the deceased was born a Hindu, but that at the date when the question in issue arises he pofesses any faith of Brahminical religion or of the religion of the Puranas. *Dagree* v *Pacotti, I. L R 19 Bom. 783, Jogendra Chandra Bose* v *Bhagwan Coomar, 1 Punjab Law Report, 251, Bhagwan Koer* v *J C Bose, I. L. R. 31 Calc. 11, Abraham* v *Abraham, 9 Moo I A. 199, In re Vathiar, 7 Mad H. C R 121, Ponnusami* v *Dorasami, I L. R 2 Mad 209, Administrator-General* v *Anandachari, I L R 9 Mad. 466, Tellis* v *Saldanha. I L R 10 Mad. 69, Bai Bai* v *Bai Santok, I L R 20 Bom 53, Hastings* v *Gonsalves, 1. L. R. 23 Bom 539,* referred to *Francis Ghosal* v *Gabri Ghosal, 1 L. R 31 Bom 25, Edith Mukerji* v *George Alfred, 52 P W R 1907,* distinguished NEPEN BALA DEBI *v* SITI KANTA BANERJEE (1910) . 15 C. W. N. 158

——— ss. 3, 111, 187—

See WILL . I L. R. 38 Calc 327

——— ss. 85, 98, 100 to 102—

See HINDU LAW . I. L R. 38 Calc. 188

——— ss. 190, 191 and 239—Act VII of 1901—*Grant of letters does not vest property of deceased in the administrator as from the date of death—Heirs of intestate Native Christian entitled to deal with their shares until grant of letters* The effect of s. 191 of the Indian Succession Act is not to vest the property of the deceased in the administrator as from the date of death Subsequent to the passing of Act VII of 1901, which made ss. 190 and 239 of the Succession Act inapplicable to Native Christians, the heirs of intestate Native Christians have the power to deal with their shares in the property of the deceased until the grant of administration and their transactions in respect of such shares will not be made invalid by the subsequent grant The property of the deceased vests in the administrator only at the time of the grant, though for certain purposes the grant may relate back to the death of the deceased. ANTONY CRUZ GONZOLVES *v.* MAKIS BOOPALRAYAN (1910)
I. L. R. 34 Mad. 395

SUCCESSION CERTIFICATE.

See SUCCESSION CERTIFICATE ACT (VII OF 1889)

——— *Mitakshara Law—Impartible Estate—Arrears of rent converted to a bond—Debt due to last holder of impartible estate if "effects of the deceased" in the hands of the successor—Succession Certificate Act (VII of 1889), s 4* Where in lieu of arrears of rent a bond was given to the holder of an impartible estate .—*Held,* that the debt due is not, in the hands of the successor to the estate, a part of the effects of the deceased within the meaning of s 4 of the Succession Certificate Act, but is in its nature, a family debt accruing to him by right of survivorship. *Jagmohandas Kilaghai* v. *Allu Maria Duskal, I L R 19 Bom. 338, Beejraj* v *Bhyropersaud, I L. R 23 Calc 912, Bissen Chand Dudhuria Bahadur* v. *Chatrapat Sing, 1 C W N. 32, Katama Natchier* v *The Rajah of Shivagunga, 9 Moo. I A 539, 2 W. R. P. C 31, Stree Rajah Yanumula Venkayamah* v *Stree Rajah Yanumula Boochia Vankondora, 13 Moo I. A. 333,* referred to GUR PERSHAD SINGH *v* DHANI RAI (1910) . . . I. L. R. 38 Calc. 182

SUCCESSION CERTIFICATE ACT (VII OF 1889).

——— ss. 2, 4—*Certificate not to be given for collection of part only of a debt—Debt in part irrecoverable—Mahomedan law—Dower. Held,* that no certificate could be granted to one of the heirs of a Mahomedan lady, who had died leaving her dower debt unrealized, for collection merely of a part of the dower debt of the deceased. *Muhammad Ali Khan* v. *Puttan Bibi, I. L R. 19 All. 129,* and *Bismillah Begum* v *Tawassul Husain, I. L. R 32 All 335,* followed. *Shitab Dei* v *Debi Prasad, 1 L R 16 All 21,* and *Akbar Khan* v. *Bilkisara Begum, All Weekly Notes (1901) 125,* referred to. GHAFUR KHAN v KALANDARI BEGAM (1910) . . . I. L. R. 33 All. 327

——— s. 4.

See SUCCESSION CERTIFICATE.
I. L. R. 38 Calc. 182

——— ——— *Reversionary heirs, if may apply for succession on Hindu widow's death—Debts accrued due during widow's life time—Government promissory notes of which certificate had been taken out by the widow—Certificate, if necessary.* The right of the reversionary heirs of a deceased Hindu to take out succession certificate in respect of debts due to the estate of the deceased is not affected by the interposition of the estate of the widow and the Court cannot reject an application for succession certificate by such heirs merely on the ground of the deceased having died long ago. A sum of money awarded in a case under the Land Acquisition Act after the death of the owner and kept in deposit under s. 32 of the Act, arrears of rent for non-agricultural lands belonging to the estate, and a Government promissory note standing in the name of the widow as the certificated holder of her husband's estate were all debts for which it was necessary for the reversionary heirs to take out

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*concld.*

——— s. 4—*concld*

succession certificate *Bancharam Mozumdar* v. *Adyanath Bhattacharjee, 13 C W. N 966 · s c 1 L R. 36 Calc. 936*, distinguished. ABINAS CHANDRA PAUL *v* PROBODH CHANDRA PAUL (1911) **15 C. W. N. 1018**

SUIT.

See BENGAL TENANCY ACT, s. 188 **I. L. R. 38 Calc. 270**

SUITS VALUATION ACT (VII OF 1870).

——— s. 8.

See JURISDICTION . **15 C. W. N. 823**

See SECOND APPEAL . **15 C. W. N. 454**

SUMMARY EVICTION.

See LAND REVENUE CODE (BOM ACT V OF 1879), S 79A. **I. L R. 35 Bom. 72**

SUMMONS.

See CIVIL PROCEDURE CODE, 1908, O V, RR. 15-23 . **I. L. R. 33 All. 649**

——— service of—

See PRACTICE . **I. L. R. 35 Bom. 213**

SURPLUS COLLECTIONS

——— suit for—

See MORTGAGE . **I. L. R. 33 All. 244**

SURVEY MAP.

See FOOTINGS . **I. L. R. 38 Calc. 687**

SURVEYS AND BOUNDARIES ACT (MAD. IV OF 1897).

——— s. 12—*Land with shifting boundaries—Damages—Lease—Lessee, rights of* Where the boundaries of land to be leased are of a shifting character, the prospective lessee is entitled to rely upon the area stated in the lease and to be put into possession of an area which approximates to that which is mentioned in the lease. *Raja Durga Prosad Singh* v. *Rajendra Narain Bagchi, 10 C. L J 570*, applied. Where the lessor is unable to put the lessee into possession of the area stipulated in the lease, he is liable to compensate the lessee by way of damages. Where the alteration to the land takes place after the lessee has been put into possession, the rule would be different. PEMMARAZU VENKIAH *v.* THE SECRETARY OF STATE FOR INDIA (1910) . **I. L. R. 34 Mad. 108**

——— ss. 13, 24, 25—*"Date of decision" for purposes of limitation is the date when it is communicated to the parties.* The starting point of limitation for an appeal by way of a suit against a final decision under s. 24 of Act IV of 1897 is the " date of decision " under s 13 The date of the decision is the date when the decision is passed ; and the decision cannot be said to be " passed " until it is

SURVEYS AND BOUNDARIES ACT (MAD. IV OF 1897)—*concld*

——— ss. 13, 24, 25—*concld*

in some way pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains Till then though it may be written, signed and dated, it is only the decision which the officer intends to pass. It does not however follow that in all cases the decision under s. 24 must be considered to be passed on the day on which the information required by the section reaches the party to whom it has to be given. The officer may give the parties sufficient notice of the day on which he will pass his decision, to enable them, if they choose, to be present and hear his decision ; and limitation will commence from such date, if the decision is announced, though the parties may not be present That is the date of communication though the parties may not care to listen. If, however, the decision is published by sending copies to the parties, the date of communication will be different It will not necessarily be the date in which the copy actually comes into the hands of the party SECRETARY OF STATE FOR INDIA *v* GOPISETTI NARAYANASWAMI NAIDU (1910) **I. L. R. 34 Mad. 151**

SURVIVORSHIP.

See MARUMAKATAYAM LAW. **I L. R. 34 Mad. 387**

SUSPENSE ACCOUNT.

See INSOLVENCY **I. L. R. 34 Mad. 125**

SUSPENSION.

See LEGAL PRACTITIONERS ACT, S 14. **15 C. W. N. 269**

T

TALUQDAR.

See OUDH ESTATES ACT (I OF 1869). **I. L. R. 33 All. 344**

1. ——— Settlement of Oudh—*Taluqdar settled with on terms as to which no evidence could be given—Second summary settlement—Villages included in taluqdar's estate and not recovered by payment of money due on account of them—Trustee or lien-holder—Redemption barred by Act No I of 1869, s. 6—Adverse possession* This appeal related to certain villages in Oudh which belonged prior to the annexation of that Province to the widow of the predecessor in title of the appellants, and were, under some arrangement of the exact nature of which there was no evidence, included in the estate of the ancestor of the respondent, a taluqdar, in whose possession they were found at the settlement in 1859 The widow at that time applied as owner for the settlement of the villages. Her claim was resisted by the agent of the taluqdar on the ground that he was entitled to possession until sums paid by him on account of the villages were paid off : and the settlement was made " in

accordance with possession," the widow being directed by the settlement officer to proceed by separate application to get the villages released by payment of the money due by her: but she took no steps to get the property released: and when in 1867 she applied for regular settlement of the villages her claim was dismissed on 31st October 1868, on the ground that they were included in the sanad granted by Government to the taluqdar In a suit brought in 1905 by representatives of the widow for possession of a share of the property on the ground that the settlement proceedings in 1859 constituted the taluqdar either a mortgagee or a trustee on behalf of the widow it was admitted that the claim for redemption was barred by s 6 of Act No. I of 1869. *Held* (upholding the decision of the Court of the Judicial Commissioner), that there was no warrant for the contention that the correlative obligation that lay on the taluqdar to release the villages on payment of the money due on account of them created a trust or constituted him a trustee for the widow, who took no steps to comply with the directions of the settlement officer, and allowed the taluqdar to remain in possession and set up a distinctly adverse title in 1867, when she applied for regular settlement *Hasan Jafar* v. *Muhammad Askari, I. L. R. 26 Calc 879 L. R. 26 I. A. 229*, distinguished. From the date of the dismissal of her application in 1868, possession was adverse to her, and the suit, not having been brought until 1905, was clearly barred by lapse of time. MUHAMMAD BAKAR *v.* MUHAMMAD BAKAR ALI KHAN (1910) . . **I. L. R. 33 All. 125**

2. ———— Will of Taluqdar—*Oudh Estates Act (I of 1869)—Sanad executed by taluqdar through the medium of family friends—Whether document was testamentary or non-testamentary—Registration of document—Indian Registration Act, III of 1877, ss. 17 and 49—Instrument affecting immoveable property—Ground not specially taken in argument in courts below—Costs.* A taluqdar in 1862, in compliance with the directions issued by the Government, made a declaration that, "I wish to file this application, that after my death Umrao Singh the eldest son (*sic*) my estate should continue in my family undivided in accordance with the custom of the *raigaddi*, and that the younger brothers shall be entitled to get maintenance from the *gaddanashin*." *Held* (affirming the decision of the Courts in India), that it was a valid testamentary disposition by the taluqdar of his estate in favour of his eldest son. The same taluqdar, having three sons, with one of whom he was on bad terms, executed in 1884 the following document, which he called a sanad:—"For Prithipal Singh, who is my son, I fix R300 annually, so that he may maintain himself. Besides this whatever I may give I will give equally to the three sons except provisions which they may take from my godown (*kothar*). The marriage and *gauna* expenses of the sons and daughters shall be borne by me. After me the three sons are to divide the property, moveable and immoveable. This has been settled through the mediation of Thakur Jote Singh of Bihat, and Thakur Ratan Singh of Rojah." *Held* (reversing the decision of the

Judicial Commissioner's Court), that it was a non-testamentary instrument. It was a family arrangement arrived at by the mediation or arbitration of two gentlemen, friends of the family and interested in its honour, and it was plainly intended to be operative immediately and to be final and irrevocable *Held*, also, that it required to be registered under s. 17 of the Registration Act (III of 1877) in order to make it effective as regards immoveable property, and, being unregistered, was, so far, void On an objection that it was not open to the appellants to contend that the document was not a will, the fact that they had, throughout the proceedings in the Courts below, taken conflicting views as to the nature of the document, was held not to preclude their Lordships from considering and determining the real question in the case, and that they were bound to give effect to the real character of the document. Neither party had pursued a consistent course in the matter. Their Lordships permitted the appellants, therefore, to raise that contention, but in allowing the appeal on that ground they did so without costs to the appellants on this appeal or in the Courts below. UMRAO SINGH *v* LACHMAN SINGH (1911) **I. L. R. 33 All. 344**

TAXING JUDGE.

———— reference by—

See COURT FEES ACT (VII OF 1870), SS 5 AND 7 . . **I. L. R. 33 All. 20**

TELEGRAM FROM COUNSEL.

See BAIL ORDERS **I. L. R. 38 Calc. 293**

TEMPLE.

———— dispute concerning—

See OFFERINGS TO DEITY. **I. L. R. 38 Calc. 387**

TENANT.

See MADRAS RENT RECOVERY ACT. **I. L. R. 34 Mad. 179**

———— liability of—

See DRAINAGE . **I. L. R. 38 Calc. 268**

TENANTS-IN-COMMON.

See MORTGAGE . **I. L. R. 35 Bom. 371**

TENDER.

See INTEREST . **I. L. R. 34 Mad. 320**

TESTATOR.

———— capacity of, to execute will—

See WILL . . **I. L. R. 38 Calc. 355**

THAKBUST MAPS.

See REVENUE SALE LAW, S. 37. **15 C. W. N. 706**

———— *Jungle lands, possession of, presumption as to—Exparte entry in thakbust records without enquiry, value of.* Certain plots of land were entered in the *thakbust* maps as belonging

THAKBUST MAPS—*concld.*

to a certain Pergunnah in which the plaintiffs claimed them to be, and no question of the demarcation of boundary of these lands was raised in any of the many disputes which arose between the parties during the survey proceedings. It was further found that the title to those lands was with the plaintiffs: *Held*, that, having regard to the nature of the property which was jungle land, possession must be presumed to have been all along with the plaintiffs. A mouzah appertaining to Pergunnah Pukhuria had not been separately measured or *thaked* in the course of the survey proceedings On a statement being called for from the person in possession of the mouzah for its non-appearance on the *thak* map, his agent appeared and stated that the mouzah was wholly covered with jungle, that it being situated by the side of Garhgojah which was defendant's property had been measured along with it and that 10 gundas share of Garhgojah should be taken for that mouzah. Proceeding on these allegations the Deputy Collector made an entry to that effect A petition made by the defendant's Mukhtear denying the allegations of the plaintiff's agent was rejected as the matter had been disposed of. With the help of this disputed entry the Subordinate Judge proceeded to mark off a certain area as belonging to the plaintiff as part of the said mouzah. The High Court set aside that decision: *Held*, that as the decision of the Subordinate Judge was based on the entry made *ex parte* and without enquiry and on an allegation of the zemindar's agent which was immediately contradicted the decision of the High Court was correct. JAGADINDRA NATH ROY *v.* HEMANTA KUMARI DEBI (1911) . . . . . **15 C. W. N. 887**

THIRD JUDGE.

——— duty of—

See PRINTING PRESS, FORFEITURE OF **I. L. R. 38 Calc. 202**

TITLE.

——— evidence of—

See REGISTRATION ACT (XVI OF 1908), S. 49 . . **I. L. R. 33 All. 728**

——— proof of—

See CRIMINAL PROCEDURE CODE, S. 145. **I. L. R. 34 Mad. 138**

TORT.

See EASEMENT . **I. L. R. 33 All 619**

——— *Public nuisance—Closure of public road—Right of suit—Special damage. Held*, that stopping a highway, and thereby rendering it necessary for a person to make a detour is such a special damage as would justify him in instituting a suit for removal of the obstructions. *Hart* v. *Bassett, 13 Jones' Reports 156*, and *Blagrave* v. *The Bristol Water Works Company, 1 H. & N. 369*, referred to. RAM CHANDRA *v.* JOTI PARSAD (1910) . . **I. L. R. 33 All. 287**

TOUT.

See LEGAL PRACTITIONERS ACT, S. 36. **15 C. W. N. 1000**

TRADE-MARK.

——— Assignment—*Trade name—Goodwill—Infringement* Where a cigarette manufacturer, carrying on only one business and being the proprietor of several trade-marks which he used indiscriminately, purported to assign to another cigarette manufacturer "all that the trade-mark, name and label known as the 'Sri Durga' trade-mark, used upon packets of cigarettes sold and known as 'Sri Durga' cigarettes and the goodwill of his business so far as the same relates thereto, and continued dealing in his cigarettes under the other mark":—*Held*, that the assignment was void and inoperative. For the assignment of a trade-mark to be operative in law, it is not sufficient that an assignment of goodwill should accompany or follow the transfer of the trade-mark, so as literally to comply with the rule that a trade-mark cannot be transferred in gross, but the trade-mark must continue to be a representation of the truth as warranting the origin of the goods to which it is attached, within the limits of deviation sanctioned by the usage of trade and commerce. *Leather Cloth Company* v. *American Leather Cloth Company, 11 H. L 523, Hall* v. *Barrows, 4 De G. J. & S. 150, Singer Manufacturing Company* v. *Wilson, L. R. 2 Ch. D 434, Singer Manufacturing Company* v *Loog, L. R. 8 A. C. 15, Pinto* v. *Badman, 8 R. P. C. 181*, and *Edwards* v *Dennis, L. R Ch. D. 454*, referred to. BRITISH AMERICAN TOBACCO CO., LD. *v.* MAHBOOB BUKSH (1910) **I. L. R. 38 Calc. 110**

——— Imitation—Abandonment—*Intention—Defendants improperly representing that their business to be business carried on by plaintiffs—Injunction—Raising of issues—Practice—Procedure.* The plaintiffs had since the year 1887 been importing into and selling in India watches manufactured at the St. Imier Factory in Switzerland. These watches bore the name "Berna" on the dial. In 1907 the plaintiffs complained of the watches supplied by the St Imier Factory and began to import watches largely from other manufacturers, while they ceased giving orders to the St. Imier Factory In the year 1908 the St. Imier Factory was purchased by the defendants and at the time of purchase the defendants asked the plaintiffs whether the defendants could positively count upon the plaintiffs to be their regular customers for the articles previously taken from the St. Imier Factory. The plaintiffs replied that they were willing in principle to reserve a part of their orders for the defendants, but that it would first be necessary for the latter to give an idea of what they were going to manufacture and the improvements they were going to make in the quality of the watches. In one of their catalogues printed in 1907 the plaintiffs announced:—"We take this opportunity of informing our customers that the name 'Berna' will be changed to 'Service' as soon as our present stock of these watches is sold out. The trade-mark will in other respects remain unaltered.

TRADE-MARK—*concld*

The alteration of the name is done to secure a trade-mark which cannot be imitated in India or elsewhere '' On the 6th of November 1908 the defendants opened a place of business in Bombay and issued a circular, dated February 1909, in which, on behalf of the defendant Company, they referred to the plaintiffs as the defendants' agents who had sold 600,000 watches made at the St. Imier Factory in past years and proclaimed that Berna Company's watches would no longer be sold by their former sole agents-importers (meaning the plaintiffs) as the defendants had decided to get rid of any middleship and to deal directly themselves. The plaintiffs thereupon filed a suit on the 2nd April 1909 against the defendants to restrain them from using and imitating various trade symbols alleged to belong to the plaintiffs and from representing that the defendants' business was the business carried on by the plaintiffs *Held*, that the plaintiffs for the last three years both in their dealings with the supplying factory and with their customers evinced very clearly and consistently their intention to abandon the name ' Berna ' as a quality mark for their watches, and it followed that they could no longer claim any exclusive title to the use of that name either alone or in a trade-mark. *Held*, further, that the plaintiffs were entitled to an injunction restraining the defendants, their servants, agents, travellers and representatives respectively, from in any manner representing that the defendant Company had been or were carrying on the business carried on by the plaintiffs or were the successors in business of the plaintiffs. *Per Curiam* —The importer who by advertising and pushing the sale of goods under a particular mark secures a wide popularity for the mark in relation to the goods sold by him is entitled to the protection of the Court for that mark in the country of importation even against the producer of the goods. *Damodar Ruttonsey* v. *Hormasji Adarji* (*unreported*) *Appeal No 942 of 1895* and *Lavergne* v. *Hooper*, *I. L. R. 8 Mad. 149*, referred to. The fact that the user of a word or mark always uses it in conjunction with his own name is not conclusive to show that the word or mark cannot be claimed as a trade-mark or that the user has waived his rights in it as a trade-mark. The question of abandonment is one of intention to be inferred from the facts of the case : *Mouson & Co.* v. *Boehm*, *I. L. R. 26 Ch D. 398* and *Lavergne* v. *Hooper*, *I. L. R. 8 Mad. 149*, followed. The practice of raising a number of issues which do not state the main questions in the suit but only various subsidiary matters of fact upon which there is not agreement between the parties is very embarrassing. Issues should be confined to questions of law arising on the pleadings and such questions of fact as it would be necessary for the judge to frame for decision by the jury in a jury trial at *nisi prius* in England. WEST END WATCH COMPANY *v.* BERNA WATCH COMPANY (1910) . **I. L. R. 35 Bom. 425**

TRADE-NAME.

See TRADE-MARK . **I. L. R. 38 Calc. 110**

TRANSFER OF HOLDING.

See CRIMINAL PROCEDURE CODE, s 526 **I. L. R. 33 All. 583**

See PENAL CODE (ACT XLV OF 1860), s 182 . . **I. L. R. 33 All. 163**

——— *Gomastha, if can bind landlord by recognising transferee of jote, a question of fact—Burden of proof of the gomastha's authority, if lies on landlord—Transfer of holding, recognition of, what constitutes.* It cannot be laid down as an inflexible rule of law that a landlord is not bound by the act of *gomastha* in recognising a transferee of an occupancy holding. The question of the *gomastha's* power to bind his landlord is one which must be decided on the particular facts of each case. The burden of proof is in the first instance upon the landlord to prove the extent of the authority of the *gomastha* as a matter peculiarly within his knowledge Where therefore a *gomastha* of the landlords accepted rent from a transferee of a jote and the landlords failed to show that the *gomastha* acted beyond the scope of his authority .—*Held*, that the facts constituted sufficient recognition of the transferee by the landlord SUDUMAN JAMADAR *v.* BEHARI MAHTON (1911) . **15 C. W. N. 953**

TRANSFER OF PROPERTY ACT (IV OF 1882).

——— *Vendee's right to possession against unpaid vendor—Vendor only entitled to statutory charge.* The provisions of the Transfer of Property Act that the vendee after conveyance is entitled to possession and that the vendor has a statutory charge on the property for unpaid purchase-money are clear and it is not competent to the Courts in a suit for possession by the vendee, to pass a decree for possession conditional on the vendee paying the balance of the purchase-money *Bai Nath Singh v. Paltu*, *I. L. R 30 All. 125*, not followed VELAYUTHA CHETTY *v.* GOVINDASAWMI NAIKEN (1910) **I. L. R. 34 Mad. 543**

——— s. 2 (*d*)—*Mortgage—Assignment of mortgage—Application of rule of damdupat* The fact that the person entitled to sue on a mortgage happens by assignment to be a Parsee cannot affect the (Hindu) mortgagor's right to claim the advantage of the rule of damdupat if it existed when the mortgage was entered into. It is not proper to infer that, because it has been expressly enacted that nothing in Chapter II of the Transfer of Property Act (IV of 1882) shall be deemed to affect any rule of Hindu Law, the Legislature has deprived a Hindu mortgagor of the protection afforded him by the rule of damdupat. The right of a mortgagee to sue for his principal and interest is a right arising from a contract and must be taken to be made subject to the usages and customs of the contracting parties. JEEWANBAI *v.* MANORDAS (1910) . . **I. L. R. 35 Bom. 199**

——— ss. 3 and 41—*Doctrine of constructive notice—Court-sale in execution—Certified purchaser—Benami—Mortgagee of certified purchaser—Civil Procedure Code (Act XIV of 1882), s. 317, (Act V*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 3—*concld.*

of 1908), s. 66. The mortgagee of the certified purchaser at a Court-sale is entitled to rely upon the title of his mortgagor including such immunity from suit as the law provides in support of the statutory title. S. 66 of the Civil Procedure Code (Act V of 1908)—which may be called in aid for the purpose of assisting in the construction of s 317 of the Civil Procedure Code (Act XIV of 1882)—supports this conclusion. *Hari Govind* v. *Ramchandra, I. L. R 31 Bom 61*, followed. The doctrine of constructive notice applies in two cases, *first*, where the party charged had actual notice that the property in dispute was charged, incumbered or in some way affected, in which case he is deemed to have notice of the facts and instruments to a knowledge of which he would have been led by an inquiry after the charge or incumbrance of which he actually knew; and, *secondly*, where the Court has been satisfied from the evidence before it that the party charged had designedly abstained from inquiring for the very purpose of avoiding notice. This does not conflict in any way with the statutory definition of notice in s 3 of the Transfer of Property Act (IV of 1882). A purchaser of property is under no legal obligation to investigate his vendor's title. But in dealing with real property as in other matters of business regard is had to the usual course of business; and a purchaser who wilfully departs from it in order to avoid acquiring a knowledge of his vendor's title is not allowed to derive any advantage from his wilful ignorance of defects which would have come to his knowledge if he had transacted his business in the ordinary way. This is what is meant by "reasonable care" in s 41 of the Transfer of Property Act (IV of 1882). Occupation of property which has not come to the knowledge of the party charged is not constructive notice of any interest in the property. MANJI KARIMBHAI *v* HOORBAI (1910) . . . I. L. R. 35 Bom. 342

——— ss. 5, 54—

See DEPOSIT . I. L. R 35 Bom. 403

——— s. 6—

See MAINTENANCE ALLOWANCE.
I. L. R. 38 Calc. 13

——— s. 6—*Transfer of expectancy—Compromise between Hindu brothers that property of a brother dying without male issue should be divided amongst survivors—Hindu law—Dayabhaga—Administration—Suit to enforce administration bond—Limitation. Held*, that a provision in a family settlement whereby certain Hindu brothers divided the family property belonging to them amongst themselves and agreed that upon the death of any one of them without male issue his share should pass to the surviving brothers was neither in contravention of Hindu Law nor obnoxious to the provisions of the Transfer of Property Act, s. 6 (*a*), as being a transfer of an expectant interest in property. *Ram Nirunjun Singh* v. *Prayag Singh, I. L. R 8 Calc 138*, followed. *Held*, also, that where the assignee of a bond given by an executor for the due administration of the estate sues to enforce the bond, time does not begin to run against him necessarily until the death of the obligor. KANTI CHANDRA MUKERJI *v.* AL-I-NABI (1911) . . . . I. L. R 33 All. 414

——— s. 6 (*a*)—

See MUHAMMADAN LAW—DOWER
I. L. R. 33 All. 457

——— s. 43.

See CIVIL PROCEDURE CODE, 1882, s. 317.
I. L. R. 33 All. 382

——— *Benefit of section can be claimed only by person who has acted on the erroneous representation of another.* The benefit of s. 43 of the Transfer of Property Act can be claimed only where the person claiming such benefit has acted on the erroneous representation of the party whose subsequently acquired interest he claims An undivided Hindu father had two sons *A* and *B* *A*, who was entitled only to one-third of the family property, mortgaged one-half of it to *C*, who knew that *A* was entitled only to one-third and did not bargain and pay for a half share Subsequently *A's* father died and *A* having become entitled to a half share, *C* sued on his mortgage seeking to make *A's* half share liable·—*Held*, that he could enforce his mortgage only against the one-third share which belonged to *A* at time of mortgage PANDIRI BANGARAM *v.* KARUMOORY SUBBARAJU (1910) I. L. R. 34 Mad. 159

——— s 45—

See JOINT TENANCY.
I. L R. 34 Mad. 80

——— s. 52—*Suit on prior mortgage—Fresh mortgage pending suit to pay off mesne mortgages—Effect—Subrogation.* Where during the pendency of a mortgage suit a fresh mortgage was executed with the object of paying off certain mesne mortgages:—*Held*, that in so far as the mortgagee under the new mortgage was entitled to be subrogated to the rights of the mesne mortgagees, the transfer was not affected by the rule of *lis pendens*. That in the absence of evidence to show an intention to extinguish the mesne mortgages paid off, the presumption was that they were intended to be kept alive TARA PROSAD MONDAL *v* KRISTA PROSAD PANDA (1910) . . 15 C. W N. 261

——— s. 55—*Sale of land—Covenant of title—Failure of consideration—Warranty, implied—Absence of express covenant to the contrary—Mortgage for balance of unpaid purchase-money if may be enforced on failure of consideration for sale—Adverse claim, compromised by purchaser—Vendor, if bound—Notice of compromise. A* conveyed a property to *D* and *D* executed a mortgage bond for a part of

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

——— s. 55—*concld*

the purchase-money yet remaining due. At the time of the sale there was some dispute between *A* and some other persons relating to some part of the lands sold Subsequently after *D's* purchase a suit was instituted by one *R* for a part of these lands and the suit was ultimately decreed in the first Court. Against that decree *D* appealed to the High Court where it was compromised on terms by which *D* gave away 133 bighas of the lands :— *Held*, that *A's* legal representative who acquiesced in the decision of the original Court could not contest the validity of the compromise made in the appeal Court in her presence and without any protest on her part that it was improvident The law relating to compromise of an adverse claim by the purchaser with or without notice to the vendor, as affecting the vendor's covenant of title, discussed That the purchaser was entitled to a reduction of the price settled because the vendor had failed to convey all that he had agreed to sell; and the consideration for the mortgage, being unpaid purchase-money, the liability under it should be reduced *pro tanto* That *D* was entitled to the benefit of s 55 of the Transfer of Property Act although there was no active fraud on the part of *A* as there had been a failure of consideration with reference to 133 bighas Any express covenant to the contrary relied on as a bar to the plaintiff's claim to be indemnified under s 55 of the Transfer of Property Act, must be in plain and unambiguous language. DIGAMBAR DAS *v.* NISHIBALA DEBI (1910) . . **15 C. W. N. 655**

——— s. 55 (*1*) (*g*)—

See VENDOR AND PURCHASER
I. L. R. 38 Calc. 458

——— ss. 56, 81, 88—

See MORTGAGE . **I. L. R. 35 Bom 395**

——— s. 59—

See EQUITABLE MORTGAGE.
I. L. R. 38 Calc. 824

——— ss 60, 74, 91—

See MORTGAGE . **I. L. R. 34 Mad. 115**

——— s. 82—*Mortgage—Contribution—Principle upon which contribution is to be assessed.* Where of two properties belonging to the same owner one is mortgaged to secure one debt and then both are mortgaged to secure another debt, for the purpose of apportioning the liability of the respective properties in regard to the subsequent mortgage, the value of the two properties must be taken into account, and credit given for the amount due upon the earlier mortgage out of the value of the property comprised in the subsequent mortgage. Where the amount due upon the earlier mortgage exceeds the value of the property comprised in that mortgage the necessary result is that the whole of the amount of the second mortgage is recoverable from the other property comprised in the latter mortgage GHULAM HAZRAT *v* GOBARDHAN DAS (1911) . **I. L. R. 33 All. 387**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 82—*concld.*

ss. 82, 100—*Mortgage—Contribution—Equitable lien—Limitation—Indian Limitation Act (IX of 1908), Sch I, Arts. 62, 120 and 132.* The owner of a property which is mortgaged with other properties to secure a single debt acquires by virtue of the provisions of ss 82 and 100 of the Transfer of Property Act, 1882, a charge against such other properties when his property has been sold in execution of a decree on the mortgage and has contributed more than its rateable share of the mortgage-debt, and none the less if the owner of such property has neither redeemed the mortgaged property nor has the sale of his property alone discharged the mortgage-decree A claim to enforce such a charge is governed by art. 132 of the first schedule to the Indian Limitation Act, 1908. *Ibn Hasan* v. *Brubhukhan Savan, I. L. R. 26 All. 407, Muhammad Yahiya* v *Rashid-ud-din, I L. R 31 All 65 Rajah of Vizianagram* v. *Rajah Satruchrla Somasekhararaz, I. L R. 26 Mad. 686*, and *Bhagwan Das* v *Har Dei, I L R. 26 All. 227*, referred to *Per* BANERJI and CHAMIER, *JJ. (dubitante* RICHARDS, *C.J.)* —If property against which a charge for contribution would otherwise have accrued has been sold and has realized more than the amount remaining due on the mortgage, an equitable lien on the surplus sale proceeds arises in favour of the person entitled to contribution. A suit to recover contribution in virtue of such a lien is governed by art 62 of the first schedule to the Indian Limitation Act, 1908, if not, perhaps, by Art. 120. *Berhamdeo Pershad* v. *Tara Chand, I. L. R. 23 Calc. 99, Gosto Behary Pyne* v. *Shib Nath Dutt, I. L R. 20 Calc 241, Kamala Kant Sen* v. *Abul Barkat, I. L R. 27 Calc. 180, Mahomed Wahib* v. *Mahomed Ameer, I. L. R. 32 Calc. 527, The Rajputana Malwa Railway Co-operative Stores, Limited* v *The Ajmere Municipal Board, I. L. R 32 All. 491*, and *Guru Das Pyne* v. *Ram Narain Sahu, I. L R 10 Calc. 860*, referred to. BHAGWAN DAS *v.* KARAM HUSAIN (1911)
I. L. R. 33 All. 708

——— s 85—

See HINDU LAW—JOINT FAMILY.
I. L. R. 33 All. 7 ; 71

See MORTGAGE . **I. L. R. 38 Calc. 60**

——— ss. 88, 89—

See MORTGAGE . **I. L. R. 38 Calc. 913**

——— s. 90—

See CIVIL PROCEDURE CODE, 1908, s 47.
I. L. R. 35 Bom. 452

——— s. 91—*Redemption mortgage of fixed rate tenancy—Death of tenant without heirs—Right of zamindar to redeem—Escheat to Crown—Agra Tenancy Act (Local II of 1901), ss. 5, 18, 20, 57.*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 91—*concld*

Held, that on the death of a fixed-rate tenant without heirs his tenancy does not escheat to the Crown but reverts to the zamindar. *Ram Dihal Rai* v. *The Maharaja of Vizianagram*, *I L. R 30 All 488*, overruled. *Ranee Sonet Kowar* v *Mirza Himmut Bahadur*, *L. R. 3 I A. 92*; *I L. R. 1 Calc. 391*, distinguished TULSHI RAM SAHU *v.* GUR DAYAL SINGH (1910) **I. L. R. 33 All. 111**

——— s. 99—

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 14.
I. L. R. 35 Bom. 248

——— s 100—*Construction of document—Charge created where words though wide are definite.* Where by a document "the properties," of one of the parties are made liable and it appears on the construction of the document that the word "properties" does not mean the properties of such party generally but certain specific properties, a charge will be created on such specific properties alone. A distinction must be drawn between wideness and indefiniteness of language. *Bheri Dorayya* v *Moddi Patu Ramayya*, *1. L. R. 3 Mad. 35*, considered MANICKAM PILLAI *v* AUDINARAYANA PILLAI (1910) **I. L. R. 34 Mad. 47**

——— s. 108—*Landlord and tenant—Sub-lessee—Avoidance of lease—Vacant possession—Holding over.* The plaintiffs were lessees of a godown for one year from 1st April 1908 at a monthly rent. From 1st May 1908 they sublet it on the same terms for the remainder of their lease to the defendant who used it for storing bags of sugar On 5th December the godown was partially destroyed by fire, and a quantity of sugar therein considerably damaged. The defendant's insurers came in to take charge of the salvage, but soon after sold the remains of the sugar to *G M*, and the latter then took possession, and continued in possession, sorting the sugar until 16th February 1909 Meanwhile on 10th December the plaintiffs had written to the landlord advising him of the fire and of their termination of the lease in consequence The landlord, however, insisted on their liability to pay rent until such time as vacant possession should be given to him. The defendant, in answer to a bill for rent, wrote to the plaintiffs to the effect that he had terminated his lease on account of the fire, and would not pay more than the proportionate rent for the first 5 days of December. As, however, vacant possession was not given until 16th February (on which day *G M* went out of possession) the plaintiffs sued the defendant for rent and for use and occupation *Held*, that the plaintiffs could not exercise their option to terminate the lease until they put the landlord into possession. If the avoidance of the lease under s 108 (*e*) of the Transfer of Property Act (IV of 1882) was effectual without surrender of vacant possession, the plaintiffs by failing to give vacant possession were holding over after the termination

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.*

——— s. 108—*concld*

of their lease and were liable for rent under an implied monthly tenancy on the same terms as before If the avoidance was ineffectual, the lease continued until put an end to by mutual consent *Held*, further, that the abandonment to the insurers by the defendant was effected for his benefit, and, in the absence of evidence that the insurers and their vendee *G M* kept the sugar in the godown in spite of protests by the defendant, the latter (as between the plaintiffs and the defendant) must be taken to have been in occupation either under his original tenancy or under a similar one resulting from his holding over. SIDICK HAJI HOOSEIN *v.* BRUEL & Co (1910) . **I. L. R. 35 Bom. 333**

——— s. 134—

See DEBT, HYPOTHECATION OF.
I L. R. 34 Mad. 53

——— s. 137—

See VENDOR AND SUB-VENDEE.
I. L. R. 38 Calc. 127

TREASURY OFFICER.

——— appropriation of payment by—

See SALE FOR ARREARS OF REVENUE.
I L. R. 38 Calc. 537

TRESPASS.

See FOOTINGS . **I. L. R. 38 Calc. 687**

See PENAL CODE (ACT XLV OF 1860) S 297 . . **I. L. R. 33 All. 773**

TRUST.

See CIVIL PROCEDURE CODE, 1882, SS 13 539 . . **I L R 33 All. 752**

See TALUQDAR . **I. L. R. 33 All 125**

TRUST-DEED.

See STAMP ACT, 1899, S 2 (*24*), SCH I, ART. 7 . **I. L. R. 35 Bom. 444**

TRUSTEES.

See LIMITATION ACT (XV OF 1877), S 10
I. L. R. 35 Bom. 49

See TRUSTEES AND MORTGAGEES' POWERS ACT . . **I. L. R. 35 Bom. 380**

TRUSTEES AND MORTGAGEES' POWERS ACT (XXVIII OF 1866).

——— *Trust-deed—Application by trustees to divert funds to other objects—Trustees' opinion—Cypres doctrine* The surviving trustees of a fund founded with the object of distributing food amongst such poor persons as might assemble at certain stated times and places petitioned the Court under s. 43 of the Trustees and Mortgagees Powers Act to divert the fund to more useful purposes on the grounds that in their opinion the charity tended to pauperise the recipients thereof and to encourage thriftlessness and laziness and

TRUSTEES AND MORTGAGEES' POWERS ACT (XXVIII OF 1866)—*concld.*

vagrancy and to produce other undesirable results: that the donor's intention was to benefit the poor of Bombay and the best way to carry out his intention would be to devote the trust funds to the education of poor boys. *Held*, that the application was entirely misconceived so far as the Act was concerned as the word "trustees" has been deleted in s. 43 of the Trustees and Mortgagees Powers Act of 1882. Even if the Act applied the Court could not under s. 43 do more than give advice or directions. It could not pass any order which would in any way alter the duties of the trustees under the trust-deed. *Held*, further, on the merits of the application that the trustees had no justification for coming to the Court, to try and get their duties under the trust-deed altered according to their ideas of what was fit and proper. *In re Weir Hospital*, [*1910*] *2 Ch. 124*, referred to. *In re* CURIMBHOY EBRAHIM, BART, (1910) I. L. R. 35 Bom. 380

TRUSTEE IN BANKRUPTCY.

See INSOLVENCY . I. L. R. 38 Calc. 542

TRUSTS ACT (II OF 1882).

——— ss. 5 and 6—

See DEPOSIT . I. L. R. 35 Bom. 403

U

UNCERTAIN EVENT.

See WILL . I. L. R. 38 Calc. 327

UNCONSCIONABLE BARGAIN.

See SPECIFIC PERFORMANCE. I. L. R. 38 Calc. 805

UNDERVALUATION OF SUIT.

See JURISDICTION. I. L. R. 38 Calc. 639

UNDUE INFLUENCE.

See WILL . I. L. R. 38 Calc. 355

UNITED PROVINCES ACTS.

See N R H-WESTERN PROVINCES AND OUDH ACTS.

——— 1900—I.

See UNITED PROVINCES MUNICIPALITIES ACT.

——— 1901—III.

See UNITED PROVINCES LAND REVENUE ACT.

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

——— ss 51, 52, 99.—*Assignment of Government Revenue—Right of Government to enhance or remit revenue.* An assignee of Government revenue takes the assignment subject to all the rights of Government to assess, enhance, reduce, remit or suspend the revenue. BENI MADHO *v.* BHAGWAN PRASAD (1911) . . I. L. R. 33 All. 556

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld.*

——— s. 51—*concld.*

1. ——— s. 233(k)—*Partition—Land belonging to plaintiffs' mahal allotted to defendants and a different plot to plaintiffs—Civil and Revenue Courts—Jurisdiction.* By a mistake of a partition amin a plot belonging to the defendants was allotted to the plaintiffs and two plots belonging to the plaintiffs were allotted to the defendants. *Held*, that no suit would lie in a Civil court to rectify this error. *Kishan Prashad* v. *Kadher Mal, All. W. N. (1900) 11*, distinguished. TIRRENI SAHAI *v.* GOKUL PRASAD (1911) . . I. L. R. 33 All. 440

2. ——— *Partition—Revenue Court irregularly entertaining an application for allotment of a share to applicant—Suit in Civil Court for declaration of title as to share so allotted—Jurisdiction.* Some of the co-sharers in a mauza applied for partition. *H*, one of the non-applicants, came in within the time limited in the proclamation issued under s. 110 of the Land Revenue Act, 1901, and asked for his share also to be partitioned of. After the time for objecting to the partition had expired, *L* filed an application claiming a share in the portion alleged by *H* to be his share, and without notice to *H* this application was granted, and part of the share allotted to him was given to *L*. *H* then sued in the Civil Court asking for a declaration of his title to the plots so allotted to *L*. *Held*, that, however erroneous the procedure of the revenue authorities might have been *H's* suit was barred by s. 233 (*k*) of the Land Revenue Act, 1901. *Muhammad Saddiq* v. *Laute Ram, I. L. R. 23 All. 291*, followed *Khasay* v. *Jugla, I. L. R. 28 All 432*, and *Muhammad Jan* v. *Sadananda Pande, I. L. R. 28 All. 394*, distinguished. LACHMAN DAS *v.* HANUMAN PRASAD (1910) I. L. R. 33 All. 169

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900).

——— s. 49—*Suit against a member of a Municipal Board for damages—Notice—Act purporting to be done in official capacity.* A member of a Municipal Board, as such member, made report to the Board which resulted in the prosecution of certain persons for a municipal offence. The persons prosecuted were acquitted and thereafter filed a suit for damages for malicious prosecution against the maker of the report. *Held*, that the defendant was entitled to the notice provided for by s. 49 of the Municipalities Act, 1900. *Muhammad Saddiq Ahmad* v. *Panna Lal, I. L. R. 26 All. 220*, distinguished. JUGAL KISHORE *v.* JUGAL KISHORE (1911) . I. L. R. 33 All. 540

USING FORGED DOCUMENT.

See FORGERY. . I. L. R. 38 Calc. 75

V

VALUABLE SECURITY.

See MAGISTRATE, POWER OF.
I. L. R. 38 Calc. 68

——— **Title page of account book.** *Semble* A title page in an account book containing the names of the partners and the amount of the capital contributed by each is, if signed by them, a "valuable security" within s. 30 of the Penal Code HARI CHARAN GORAIT *v.* GIRISH CHANDRA SADHUKHAN (1910).
I. L. R. 38 Calc. 68

VALUATION.

See APPEAL . **I. L. R. 33 All. 634**

VALUATION OF LAND.

See LAND ACQUISITION ACT (I OF 1894), S. 23 . **I. L. R. 33 All. 733**

VATANDARS.

——— **title against, by adverse possession—**

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), SS. 10 AND 13.
I. L. R. 35 Bom. 146

VENDOR.

——— **liability of—**

See VENDOR AND PURCHASER.
I. L. R. 38 Calc. 458

VENDOR AND PURCHASER.

1. ——— **Sale of property in possession of a third person**—*Person in possession claiming to be owner—The vendor a benamidar—Negligence.* The plaintiff purchased a house from a person who had the title-deeds of the house made out in his name. The house was in the defendant's possession, who claimed to be its owner and it appeared that the plaintiff's vendor was only a *benamidar* for the defendant. The plaintiff sued to recover possession of the house from the defendant. *Held*, that the plaintiff could not succeed because he omitted to make the inquiries which he was bound to make to perfect his own title and by his own negligence exposed himself to the risk of purchasing property which in reality belonged not to his vendor but to the defendant. VYANKAPACHARYA *v.* YAMANASAMI (1911)
I. L. R. 35 Bom. 269

2. ——— **Mortgage**—*Contract of Sale—Breach by Vendor—Loss of bargain—Liability of vendor—Transfer of Property Act (IV of 1882), s. 55 (1) (g)—Measure of damage.* The owners of certain immoveable property, which was under a mortgage, entered into a contract for the sale of the property, but subsequently declined to complete the sale, on the ground of the existence of the mortgage. Thereafter the property was acquired under the land acquisition Act, by the Local Government; and the compensation paid to the owners including the statutory allowance of 15 per cent. far exceeded the contract price. On a suit brought

VENDOR AND PURCHASER—*concld.*

by the purchaser for damages for breach of the contract of sale:—*Held*, that the vendors were bound to convey the property free from incumbrances, and the existence of the mortgage was no defence to the purchaser's action. *Engell* v. *Fitch. L. R 4 Q. B. 659, Day* v. *Singleton, [1899] 2 Ch. 320, Jones* v. *Gardiner, [1902] 1 Ch. 195*, referred to *Flureau* v. *Thornhill, 2 W. Bl. 1078, Bain* v. *Fothergill, L. R. 7 E. & I. App. 158*, distinguished. *Semble:* The ruling in *Bain* v. *Fothergill, L R. 7 E. & I. App. 158*, does not apply to India, and there is no exception to s. 73 of the Indian Contract Act, in the case of sale of immoveable property. *Ranchhod* v. *Manmohan Das, I. L. R. 32 Bom. 165*, and *Pitamber Sundarji* v. *Cassibai, I L. R. 11 Bom. 272*, referred to. The measure of damage was the defference between the contract price and the compensation allowed to the vendors, excluding, however, the statutory allowance of 15 per cent, inasmuch as the breach had occurred before the acquisition. NABINCHANDRA SAHA PARAMANICK *v.* KRISHNA BARANA DASI (1911)
I L. R. 38 Calc. 458

VENDOR AND SUB-VENDOR.

——— **Estoppel**—*Unpaid Vendor—Appropriation—Jute trade, usage of—Pucca delivery orders—Negotiability—Documents of Title—Indian Contract Act (IX of 1872), s. 108—Transfer of Property Act (IV of 1882), s. 137.—Damages.* A delivery order is recognised as a document of title under s. 108 of the Contract Act and s. 137 of the Transfer of Property Act, and under a delivery order the transferee acquires a title to the goods to which it relates. By the usage of the jute trade in Calcutta, *pucca* delivery orders are issued only on cash payment, are passed from hand to hand by endorsement, and are sold and dealt with in the market as absolutely representing the goods to which they relate. On the 1st March 1909, the defendant company sold to J. & Co.'s principals certain Hessian cloth on the terms that "payments were to be made in cash in exchange for delivery order on sellers, and delivery of the goods was to be given and taken ready payment against *pucca* delivery order." A *pucca* delivery order was issued on the 2nd March by the defendant company in favour of J. & Co.'s principals or order, embodying the term "ready shipment." On the 3rd March J. & Co. requested the plaintiffs to advance money on the security of the delivery order. The plaintiffs on making enquiries at the mills were informed the delivery order was "all right." On the 4th March J. & Co. obtained an advance of money from the plaintiffs on the pledge of the delivery order and duly endorsed the delivery order to the plaintiffs. On the same date J & Co. handed the defendant company a cheque in payment of the goods comprised in the delivery order. On the 8th March the defendant company presented the cheque for payment, but it was dishonoured. The defendant company thereupon refused to give delivery of the goods to the plaintiffs under the delivery order. The plaintiffs obtained an absolute release of all J. & Co.'s interest in the delivery order, and brought an

VENDOR AND SUB-VENDOR—*concld.*

action against the defendant company for delivery of the goods or their value or damages for conversion. *Held*, that the defendant company were estopped from denying that cash had been paid for the goods to which the delivery order related and they could not claim to be entitled to a lien as against the plaintiffs. The defendant company were further estopped from denying that they had appropriated goods of the required quantity and description to the delivery order, and that they held these goods for the plaintiffs *Goodwin* v *Robarts*, *L R. 1 A C 476*, referred to ANGLO-INDIA JUTE MILLS CO *v* OMADEMULL (1910) **I L R. 38 Calc. 127**

VERIFICATION PROCEEDINGS.

See CONSPIRACY TO WAGE WAR **I. L. R. 38 Calc. 559**

VIEW OF PREMISES.

See PRACTICE. **I. L. R. 35 Bom. 317**

VIS MAJOR.

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS 50, 54 **I. L. R. 35 Bom. 492**

VOLUNTARY PAYMENT.

See MADRAS IRRIGATION CESS ACT, S 2 **I. L. R. 34 Mad. 295**

VOTER.

——— qualification of—

See MUNICIPAL ELECTION. **I. L. R 38 Calc 501**

W

WAGERING CONTRACT.

See CONTRACT ACT (IX OF 1872), S 30. **I. L. R. 33 All. 219**

WAGING WAR.

See CONSPIRACY TO WAGE WAR. **I. L. R. 38 Calc. 559**

WAIVER.

See INSTALMENTS. **I. L. R. 35 Bom. 511**

See LANDLORD AND TENANT. **I. L. R. 34 Mad. 161**

——— of notice—

See COMMON CARRIERS. **I. L. R 38 Calc. 50**

——— *Instalment decree—Default—Instalments subsequently paid with interest, accepted—Waiver—Question of law—Second appeal.* An instalment decree provided that on the failure of the judgment-debtor to pay any instalment the decree-holders would be entitled to realise the whole sum with interest at 12 per cent. per annum by the sale of the mortgaged property. Default was made in the payment of one of the instalments and

WAIVER—*concld.*

an application for execution was made but was dismissed for non-prosecution. Subsequently the judgment-debtors by petition put in the sum due on the defaulted instalment with interest and also the sum due on the next instalment specifying the instalments for which the different sums were paid. The decree-holder withdrew the money. Several other instalments specifying the instalment in respect of which each deposit was made were similarly deposited and withdrawn. On an application by the decree-holder for execution of the entire decree with interest at 12 per cent. from the date of the default, crediting the amounts received as merely part payments on account of the decretal debt. *Held*, that the circumstances constituted a waiver of the default and it was no longer open to the decree-holder to execute the decree on account of the default The payments made were payments on account of instalments and not part payments of the entire decree. Two useful tests may be applied to determine whether there has been an actual waiver, *viz.*, (i) whether the payment subsequently accepted may be looked upon as a valuable consideration for the renunciation of the decree-holder's rights, (ii) whether the decree-holder has by his conduct intentionally caused the judgment-debtors to believe that he had renounced his right. The question of waiver is a mixed question of law and fact, and the High Court can interfere on this ground in second appeal. EASIN KHAN *v.* ABDUL WAHAB SIKDAR (1910) . . **15 C. W. N. 10**

WAJIB-UL-ARZ.

See PENSIONS ACT (XXIII OF 1871), SS. 3, 4, 6 AND 8 . **I. L. R. 33 All. 580**

See PRE-EMPTION. **I. L. R. 33 All. 85; 104; 196; 296; 299; 605; 637**

WAKF.

See CIVIL PROCEDURE CODE, 1882, SS. 30 AND 539 . **I. L. R. 33 All. 660**

WAQF.

See MAHOMEDAN LAW—WAKF.

WARRANT.

——— *Witness—Rescuing from lawful custody—Warrant against a witness issued in the first instance without recording reasons in writing—Legality of warrant and arrest—Penal Code (Act XLV of 1860), s. 225 B—Criminal Procedure Code (Act V of 1898), s. 90, Sch. V, Form VII—Practice.* The issue of a warrant of arrest by a Magistrate against a witness in the first instance, drawn up in the terms of Form VII of Sch. V of the Criminal Procedure Code, but without recording his reasons in writing therefor, as required by s. 90 of the Code, is illegal; and a person rescuing the witness arrested on such warrant is not guilty of an offence under s. 225 B of the Penal Code. SUKHESWAR PHUKAN *v.* EMPEROR (1911) **I. L. R. 38 Calc. 789**

WARRANTY.

See CONTRACT . 15 C. W N. 981

See TRANSFER OF PROPERTY ACT, s. 55. 15 C. W. N. 655

WATER.

See EASEMENT . 15 C. W. N. 259

——— rights respecting flow of—

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WATER RATE.

——— *Madras Board of Revenue Standing Orders, Edition 1908, Ch I, App. I, s. D, rules 2 and 3—"Full water-rate," meaning of.* The words "full water-rate" in rule 2 of the Standing Orders of the Madras Board of Revenue, Ch I, App. I, s D (Ed 1900, p. 91), mean full wat r-rate in respect of wet cultivation and not full water-rate in respect of the crop actually raised SECRETARY OF STATE FOR INDIA *v.* SUBBA ROW OF KURNOOL (1910) . I. L. R 34 Mad. 436

WHIPPING.

——— sentence of—

See WHIPPING ACT (IV OF 1909), s. 3 I. L. R. 35 Bom. 137

WHIPPING ACT (IV OF 1909).

——— ——— s. 3—*Criminal Procedure Code (Act V of 1898), s. 565—Indian Penal Code (Act XLV of 1860), s. 7—Sentence of whipping only passed on accused—Order to accused to notify his residence—Validity of the order.* S. 565 of the Criminal Procedure Code (Act V of 1898) must be strictly construed. The order contemplated by the section can only be made at the time of passing sentence of transportation or imprisonment upon a convict It cannot be made where the Court, instead of passing that sentence, passes a sentence of whipping EMPEROR *v.* FULJI DITYA (1910) I. L R. 35 Bom. 137

WIDOW.

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——— prior right of adoption between widows—

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——— right of, to retain husband's property for dower—

See MAHOMEDAN LAW—DOWER I. L. R. 38 Calc. 475

WIFE.

——— rights of—

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WILL.

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See LIMITATION ACT (XV OF 1877), s. 10 I. L. R. 35 Bom 49

See HINDU LAW—WILL I. L. L. 38 Calc. 188; 468

1. CONSTRUCTION.

1. ——— *Construction of document—Bequest to take effect after deaths of testator and his wife—Legatee surviving testator but predeceasing wife—Vested or contingent interest* One *S* executed a will whereby he gave all his property after the death of himself and his wife *M* to his daughter *B* and his nephew *D*. *D* survived the testator but predeceased *M Held*, that *D* took a vested interest in the property which was transmissible to his sons *Bhagabati Barmanya* v. *Kali Charan Singh, I L R 38 Calc, 468, 8 All L J. 423*, followed BILASO *v* MUNNI LAL (1911) I. L R. 33 All 558

2. ——— *Construction of will—Clause for maintenance of daughters—Succession Act (X of 1865), ss. 111, 187—"Uncertain event"—Marriage of daughters—Legatee, right of, to sue—Succession Act, s 3—"Probate" of will obtained only after institution of suit—Grant of Probate, modified by High Court on appeal.* A Hindu died in 1879, leaving a will, whereby (among other things) he made provision for his wives and his daughters who survived him. The clause providing for the daughters was. "When they will be married, and if they desire to live in separate houses, the person in whose management my property will be at the time will make separate houses for them in the vicinity of my house from the income of my property. For the maintenance of my daughters I fix an allowance of R600 a year for Srimati Prasanna, and R600 for Srimati Sarat As long as the daughters will live in the separate houses in this place they will get the fixed allowances, respectively, but if the daughters do not live in this place, they will get R10" The daughters married in 1888 and 1889 respectively, and lived in separate houses. In suits for their allowances it was contended that the bequests to them were given in the "uncertain event" of their marriage, and as that event did not happen until after the death of the testator, the bequests were void by reason of s. 111 of the Succession Act (X of 1865) and never took effect. *Held*, on the construction of the above clause, that the payment of maintenance was not contingent on the daughters' marriages, and that therefore s 111 was not applicable At the time the suits were instituted, no letters-of-administration had been granted, but pending the suits the widow obtained from the District Judge a grant of letters-of-administration with the will annexed. The grant was, on appeal, modified by the High Court by limiting it to the realisation of the maintenance allowance provided by the will for the

WILL—*contd.*

1. CONSTRUCTION—*contd.*

widow; but before the letters-of-administration could be recalled and altered, the widow died and the letters were never formally altered. It was contended that the suits could not be maintained with reference to s 187 of the Succession Act which requires that before the right of a legatee can be established "probate of the will shall have been granted" *Held*, that the grant of administration with the will annexed was, within the meaning of s. 3 of the Act, a grant of "probate" which was a compliance with the provisions of s. 187. The subsequent limitation of the grant was immaterial. So long as the compliance with the section was prior to decree, the fact that it was after the institution of the suits made no difference and the Court was fully competent to deal with the suits. CHANDRA KISHORE ROY *v.* PRASANNA KUMARI DASI (1910) . . . I. L. R. 38 Calc. 327

3. ——— *Will, rules for devolution of trust if constitutes—Probate, if may be granted of an instrument laying down rules for devolution of trust—Partial probate, if may be given—Residuary bequest, effect of.* Where a Mohunt made a will the main body of which simply laid down rules for the devolution of trust property, but there was a clause in the following terms: "the said K shall get and shall be entitled of his own accord to make a gift or sale of any other property that I may earn during my life-time. . . ." *Held*, that, whether or not there was any such residuary property, there was here a valid testamentary disposition which may be admitted to probate though the main body of the will being a deed merely evidencing a devolution of trust would not by itself be testamentary or admissible to probate. *Held*, further, that in the circumstances probate must be granted of the will as a whole, leaving it open to any party to establish his title by suit to any property in respect of which there may be a declaration of trust ineffectual as a will, and vesting the whole estate in the executor pending determination of title to such property BAISNAV CHARAN DASS BAIRAGI *v.* KISHORE DASS MOHANTA (1911) . . . . 15 C. W. N. 1014

4. ——— *Will or family arrangement—Immediate operation—Irrevocability—Registration—Registration Act (III of 1877), s. 17—Pleadings, inconsistency in—Costs—Successful party deprived of all costs.* A document executed by the owner of an estate on 23rd May 1884, which was plainly intended to be operative immediately and to be final and irrevocable, was held to be a non-testamentary instrument, *e.g.*, a family arrangement which as regards immoveable property failed of effect because it was not registered as required by s 17 of the Registration Act (III of 1877). The appellants in whose favour the above decision was given having set up a will of a later date had started with the case that the instrument in question was a will, but the will propounded by them being found not proved, they later on attacked the document on the ground stated above. Similar inconsistency appeared in the pleadings of their opponents. *Held*, that in the circumstances the Judicial Committee was not precluded from giving effect to the real character of the instrument, but the appellants were deprived of their costs in all the Courts. UMRAO SINGH *v.* LACHMAN SINGH (1911) . . . . I. L. R 33 All. 344 s.c. 15 C W. N. 497 L. R. 38 I. A. 104

WILL—*contd.*

1. CONSTRUCTION—*concld.*

2. EXECUTION.

1. ——— *Execution of Will—Proof of capacity of testator to execute Will—Undue influence—Evidence of exercise of such influence—Absence of evidence of any coercion—Question of fact, whether property was ancestral or acquired—Concurrent decisions on fact.* In this case the question was as to the capacity of a testator to execute a will propounded by the appellants; and it was alleged that they had exercised undue influence over him in the matter of the execution whilst he was admittedly very seriously ill, though the evidence was to the effect that he was in possession of his senses and understood what he was doing when he signed the will. *Held* (reversing the decision of the Chief Court of the Punjab), that, so far as the charge of exercising undue influence was concerned, all that was shown by the respondents who were attacking the will was that there was motive and opportunity for the exercise of such influence by the appellants, and that some of them in fact benefited by the will to the exclusion of other relatives of equal or nearer decree. Circumstances of that character might suggest suspicion, and would certainly lead the Court to scrutinise with special care the evidence of those propounding the will. But, in order to set it aside, there must be clear evidence that the undue influence was in fact exercised or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property. Such evidence was not only lacking in this case, but in the opinion of their Lordships of the Judicial Committee, the circumstances attending the making and execution of the will were not reasonably consistent with it. *Held*, also, that, under the circumstances, the evidence as to capacity was not displaced by mere proof of serious illness and of general intemperance, and that the appellants had discharged the onus which lay on them of proving that the will was duly executed by the testator while in his proper senses. The question whether property was ancestral or not, was held to be substantially one of fact, and therefore subject to the usual practice of their Lordships not to interfere where two Courts had concurrently found it was not ancestral but self-acquired. BUR SINGH *v* UTTAM SINGH (1910) I. L. R 38 Calc. 355

2. ——— *Signature, proof of—Hand-writing expert, opinion of, without examination in Courts, if admissible—Will, proof of.* The propounder of a will should prove to the satisfac-

2. EXECUTION—*concld.*

tion of the Court beyond all possible doubt that the will was executed by the alleged testator and that it was executed in accordance with the law and that the testator at the time of execution was in a fit state of mind and body to execute the will and so fully appreciated what he was doing as to the disposition of the property. The opinion of a handwriting expert on a signature, when he was not called as a witness and not subjected to cross-examination, was inadmissible in evidence. PADMA PRIYA DEBYA *v.* DHARMA DAS DEB SARMA (1911) 15 C. W. N 728

3. EXECUTOR.

——— *Executor acting under —Executor setting up adverse title—Estoppel.* An executor under a will who has accepted the office of executor and acted as such is estopped thereby from setting up an adverse title to property disposed of by the will *Srinivasa Moorthy* v. *Venkata Varada Ayyangar*, *I L R 29 Mad 239*, followed *Per* ARNOLD WHITE, *C.J.*—The fact that an executor has not taken out probate (at any rate where the law does not require him to do so) is immaterial *Per* WALLIS, *J*—An executor is not at liberty to set up an adverse title to property which has come to his hands as executor any more than a trustee is entitled to set up an adverse title to property which he has taken possession of as trustee The plaintiff's position was altered by his looking on and not opposing the first defendant in the steps taken by the latter to get possession of the assets. The fact that an executor has not taken out probate is immaterial. *Per* MILLER, *J.* (dissenting).—It is not clear in this case as it was in *Srinivasa Moorthy* v. *Venkata Varada Ayyangar, I. L. R. 29 Mad. 239*, that the executor was let into possession under the will nor in this case was the plaintiff induced to after his position ; the principles of estoppel do not therefore apply. MUNISAMI CHETTI *v* MARUTHAMMAL (1910) . . I. L. R. 34 Mad. 211

WINDING UP ORDER.

See COMPANIES ACT (VI OF 1882), S. 169 I. L. R. 33 All. 641

WITHDRAWAL OF SUIT.

See CIVIL PROCEDURE CODE, 1908, OO. XXIII, XLI, R 11. I. L. R. 35 Bom. 261

WITNESS.

See DISPUTE CONCERNING LAND. I. L R. 38 Calc. 24

See FACT . . 15 C. W. N. 717

See PENAL CODE, S. 467. 15 C W N. 565

See WARRANT. I. L. R. 38 Calc. 789

——— Witness if party to suit. Witnesses examined in a suit or proceeding are not to

be considered parties to the suit or proceeding. *Emperor* v. *Ghansham Singh, I. L R. 32 All. 74*, referred to DEBI LAL *v* DHAJADHARI GASHAI (1911) . . . . 15 C. W. N. 565

WORDS AND PHRASES.

——— "act together"—

See BENGAL TENANCY ACT, S. 188. I. L. R 38 Calc. 270

——— "addition to embankment"—

See EMBANKMENT I. L. R 38 Calc. 413

——— "aggrieved person"—

See PROVINCIAL INSOLVENCY ACT, S. 36 15 C W. N. 253

——— "agriculturist"—

See DEKKHAN AGRICULTURISTS' RELIEF ACT . . I. L. R 35 Bom. 266

——— "alienated"—

See LAND REVENUE CODE (BOM. V OF 1879), S 3 (*19*) I. L R. 35 Bom. 462

——— "annual net profit"—

See CESS ACT . 15 C. W. N. 201

——— "annual net profits, return of"—

See MINES . I. L. R. 38 Calc. 372

——— "any accused person"—

See CRIMINAL PROCEDURE CODE, S. 431 I. L. R. 35 Bom. 407

——— "buildings"—

See DISTRICT MUNICIPAL ACT, S. 96. I L R. 35 Bom. 412

——— "Court"—

See LIMITATION ACT, 1877, S 14. I. L. R. 35 Bom. 139

——— "default"—

See EXECUTION OF DECREE. I. L. R. 38 Calc. 482

——— "discharged"—

See CRIMINAL PROCEDURE CODE, S. 119. I. L. R 35 Bom. 401

——— "dishonestly or fraudulently"—

See FORGERY . I. L. R. 38 Calc. 75

——— "full water-rate"—

See WATER-RATE . I. L. R. 34 Mad. 436

——— "Hindu"—

See SUCCESSION ACT, S. 2 15 C. W. N. 158

WORDS AND PHRASES—*contd.*

———— "instrument of partition"—

See STAMP ACT (II OF 1899), S. 59
I. L. R. 35 Bom. 75

———— "intiqal"—

See PRE-EMPTION . I. L. R 33 All. 104

———— "investigation"—

See LEGAL PRACTITIONERS ACT, S. 14.
15 C. W. N. 269

———— "mahabat"—

See MAHOMEDAN LAW.
I. L. R 33 All. 421

———— "malik"—

See WILL . I L. R. 35 Bom. 279

———— "new and important matter"—

See CIVIL PROCEDURE CODE, 1908, O. XLVIII, r 1. . I. L. R. 33 All. 569

———— "newspaper"—

See PRINTING PRESS, FORFEITURE OF.
I. L. R. 38 Calc. 202

———— "offence involving a breach of the peace"—

See CRIMINAL PROCEDURE CODE, S. 106.
I. L. R, 33 All. 771

———— "owner"—

See BENGAL MUNICIPAL ACT, SS. 6 AND 15
15 C. W. N. 586

See MUNICIPAL ELECTION
I. L. R. 38 Calc. 501

———— "purchaser"—"certified purchaser"—

See REVENUE SALE LAW, S. 37.
15 C. W. N. 706

———— "recognised or authorised to act"—

See BENGAL TENANCY ACT, S. 188.
15 C. W. N. 74

———— "refused to take"—

See PRACTICE . I. L. R. 35 Bom 213

———— "release"—

See STAMP ACT (II OF 1899), S. 59.
I. L. R 35 Bom. 75

———— "reside"—

See SUBSTITUTED SERVICE.
I. L. R. 38 Calc. 394

WORDS AND PHRASES—*concld.*

———— "resides"—

See CIVIL PROCEDURE CODE, 1908, O. V. r 17 . . 15 C. W. N. 393

———— "stream"—

See MADRAS IRRIGATION CESS ACT, S. 2.
I. L. R. 34 Mad. 295

———— "successor"—

See AGRA TENANCY ACT (II OF 1901), S. 158 . I. L. R. 33 All. 553

———— "suit or other legal proceeding"—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 17, 103 AND 104.
I. L. R. 35 Bom. 63

———— "talukdari tenure"—

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I. L. R. 35 Bom. 97

———— "wanta lands"—

See GUJERATH TALUKDARS' ACT (BOM. ACT. VI OF 1888), S 31.
I. L. R. 35 Bom. 97

WORKMEN'S BREACHES OF CONTRACT ACT (XIII OF 1859).

———— ss. 1. 2, 4—Indefinite contract—*Advance of money to workman to be paid off out of wages at employer's option—Slavery—"Contract for term certain or for specified work or otherwise," meaning of—Scope of the Act.* Where an advance of money made by an employer to a workman was agreed to be repaid out of the workman's wages, not when the borrower chose to pay but when the employer chose to realise it. *Held*, that the contract was indefinite and sanctioned a species of slavery and was not enforcible under the provisions of Act XIII of 1859. *Proceedings, 12th Dec. 1873, 7 Mad. H. C. R. Rl xxx*, and *Ram Prasad* v. *Dirgopal, I. L. R. 3 All 774*, followed. The advance was made as a loan and not on account of work contracted to be performed within the meaning of s. 1 of the Act. S. 4 of the Act which purports to bring within its operation "all contracts and agreements whether by deed or written or verbal and whether such contract be for a term certain or for specified work or otherwise" is controlled by s. 1 which provides that the advance should have been made to the workman "on account of any work which he shall have contracted to perform" The Act does not cover breaches of all kinds of contract between (speaking generally) employer and workman. GOBINDA RAJWAR v. H. J APKAR (1910)
15 C W. N. 15

WRONGFUL DISMISSAL.

——— Suit for wrongful dismissal against Crown, if lies—*Dismissal—Government service for commercial undertakings—Agreement of service—Notice in terms of agreement—Payment of wages for period under notice—Crown, power of dismissal of Government servants, civil and military—21 and 22 Vict., c. 106, s 65.* A servant who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice cannot maintain an action for wrongful dismissal. The Crown in the absence of Statutory provisions can dismiss any servant in its civil or military employ exactly as the East India Company could under s. 75 of 3 and 4 Will. IV, Ch. 85, and, therefore, a suit for wrongful dismissal at the instance of a dismissed servant does not lie against the Secretary of State for India in Council under s. 65 of 21 & 22 Vict, Ch. 106. KING *v.* SECRETARY OF STATE FOR INDIA (1908)
15 C. W. N. 486

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ZEMINDAR.

——— liability of, for unlawful acts of his servants.

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 38 Calc. 156

ZERAIT.

See LANDLORD AND TENANT.
I. L. R. 38 Calc. 432

ZURPESHGI LEASE.

See BENGAL TENANCY ACT, s, 5 (*5*).
15 C. W. N. 345

See LANDLORD AND TENANT.
I. L. R. 38 Calc. 432

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